TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. [illegible] 156

JAMES A. FARQUHAR, OWNER AND CLAIMANT OF THE STEAMSHIP "NEWFOUNDLAND," AND DAVID ROBERTSON & COMPANY, OWNERS OF THE CARGO OF SAID STEAMSHIP, APPELLANTS,

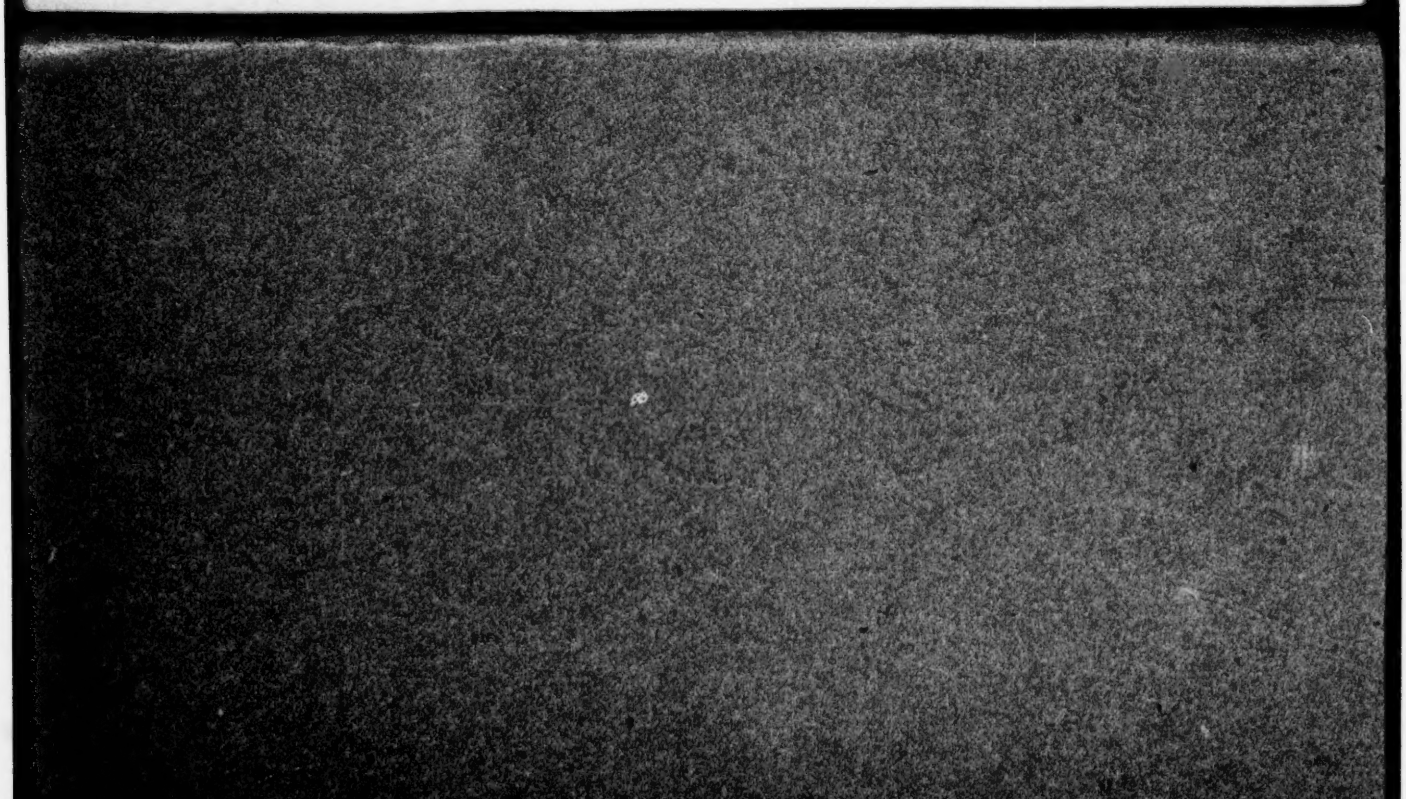
vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 2, 1896.

(17,181.)



(17,181.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 596.

JAMES A. FARQUHAR, OWNER AND CLAIMANT OF THE STEAMSHIP "NEWFOUNDLAND," AND DAVID ROBERTSON & COMPANY, OWNERS OF THE CARGO OF SAID STEAMSHIP, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Caption	*a*	1
Libel for condemnation *jure belli*	1	1
Warrant of arrest and return	3	2
Monition and return	4	3
Answer of J. A. Farquhar to original libel	5	4
Answer of D. Robertson and Company to original libel	8	6
Decree, filed August 15, 1898	12	8
Opinion, filed August 17, 1898	14	9
Amended libel	26	15
Exceptions of D. Robertson and Company to decrees of August 15 and 17, 1898	28	16
Exceptions of J. A. Farquhar to decrees of August 15 and 17, 1898	31	18
Answer of J. A. Farquhar to amended libel	34	19
Answer of D. Robertson and Company to amended libel	37	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1898.

	Original.	Print.
Testimony *in preparatorio*	40	22
Testimony of Captain F. N. Malcolm	40	22
Albert Salkus	58	33
Levi Bursey	68	38
Horatius Shawner	78	44
Testimony for libellant on final hearing, August 30, 1898	89	50
Testimony of Captain M. R. S. MacKenzie	89	50
A. E. Culver	119	66
W. V. Pratt	129	72
G. R. Evans	140	78
A. R. Nickerson	146	81
Testimony for respondent on final hearing	149	83
Testimony of Captain F. N. Malcolm	149	83
Albert Salkus	201	114
Levi Bursey	214	121
William Cody	216	123
Horatius Shawner	217	123
Levi Blackmore	218	124
G. W. Payne	220	125
F. N. Malcolm (recalled)	229	130
Testimony in reply for libellant	230	131
Testimony of W. V. Pratt	230	131
Testimony for respondent (recalled)	233	133
Testimony of Captain F. N. Malcolm	233	133
Extract from log of "Mayflower"	235	133
Memorandum attached to chart by respondent	238	134
Opinion on final hearing	239	135
Order for sale	258	146
Amended order for sale	259	146
Notice of appeal	260	147
Petition for appeal	261	148
Order allowing appeal	265	150
Appeal bond	266	150
Citation	270	152
Assignments of error	271	153
Order transmitting record	276	156
Certificate of clerk	276	156

a *Transcript of Record.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court.

At a district court of the United States for the district of South Carolina, begun and holden at the court-house, in the city of Charleston, on the 23rd day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and on the subsequent days, as stated in the record, before the Honorable William H. Brawley, United States judge, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

1 *Original Libel and Order for Process.*

Filed 23 July, 1898.

UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court. In Admiralty.

To the Honorable William H. Brawley, judge of the district court of the United States for the district of South Carolina:

The libel of Abial Lathrop, attorney of the United States for the district of South Carolina, who libels for the United States and for all parties in interest against the ship or vessel called the Newfoundland, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That pursuant to instructions from the President of the United States, M. R. S. Mackenzie, of the United States Navy, in and with the United States ship of war the Mayflower, her officers and crew, did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said ship or vessel the Newfoundland, of 557 registered tons, with a cargo on board of the same, and commanded by Captain Frederick Malcolm, in attempting to violate the blockade which had been proclaimed by the President of the United States to exist at the port of Havana, Cuba, and which was then rendered effective by the naval forces of the United States, and that the said ship and cargo have been brought into this port and harbor of Charleston, in the State of South Carolina, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

2 Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and

prayer of this libel and called to appear and claim the same, that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said vessel, the Newfoundland, together with her tackle, apparel, furniture, and cargo, may, on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as prize of war and the proceeds distributed according to law.

ABIAL LATHROP,
United States Attorney.

Let monition and attachment issue, returnable August eighth (8th August), 1898.

WM. H. BRAWLEY, *U. S. Judge.*

23 July, 1898.

3 *Warrant of Arrest.*

Filed 23 July, 1898.

THE UNITED STATES OF AMERICA, }
South Carolina District. }

In the Court of Admiralty of the United States of America for South Carolina District.

The United States of America to the marshal of the court of admiralty for the district aforesaid or to his lawful deputy, Greeting:

You are hereby commanded without delay to arrest the ship Newfoundland and her cargo, in whose possession soever [L. S.] the same may be found within the jurisdiction of this said court, and to cite the owners of the said ship "Newfoundland" and of her cargo, and all other persons whomsoever having or pretending to have any right, title, claim, or interest therein, to be and appear before the Hon. Wm. H. Brawley, the judge of the said court, at the court house, in Charleston, on Monday, 8th August, 1898, to answer the libel of the United States in a certain cause of admiralty jurisdiction.

Witness Hon. W. H. Brawley, judge of the court, at Charleston, the twenty-third day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the sovereignty and Independence of the United States of America the 123rd year.

ABIAL LATHROP,
U. S. Attorney, Libellant's Proctor.

[Seal United States District Court, Eastern District So. Ca.]

C. J. C. HUTSON,
C. D. C. U. S., S. C.

Return on Warrant.

E. B. Sligh, office deputy U. S. marshal, being duly sworn, says that on 23rd July, 1898, at Charleston, S. C., he attached the within-named vessel, and that he served the within warrant by delivering a copy of same to F. N. Malcolm, master of said vessel, and that he posted copies on the said vessel and on the court-house door.

E. B. SLIGH, *Office D. M.*

Sworn to before me July 23, 1898.

RICHARD W. HUTSON,
Dep. C., D. C. U. S., S. C.

4 *Monition.*

Filed 23 July, 1898.

UNITED STATES OF AMERICA,
Eastern District of South Carolina, In Admiralty, } *ss:*

The President of the United States of America to the marshal of the district of South Carolina, Greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of South Carolina on the twenty-third day of July, in the year of our Lord one thousand eight hundred and ninety-eight, by the United States against the ship "Newfoundland," her tackle, apparel, and furniture and cargo, in a cause of prize, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court on that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., and cargo, may be cited in general and special to answer the premises, and, all proceedings being had, that the said ship or vessel, her tackle, &c., and cargo, may, for the causes in said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore commanded to attach the said ship or vessel, her tackle, &c., and cargo, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of South Carolina, on Monday, the eighth day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Wm. H. Brawley, judge of the said court, at

the city of Charleston, in said district, this twenty-third day of July, A. D. 1898.

[L. S.] ABIAL LATHROP,
United States Attorney, Proctor for Libellant.

[Seal United States District Court, Eastern District So. Ca.]

C. J. C. HUTSON,
C. D. C. U. S., S. C.

Return on Monition.

E. B. Sligh, office deputy U. S. marshal, being duly sworn, says that on 23rd July, 1898, at Charleston, S. C., he attached the within-named vessel, and that he served the within monition by delivering a copy of same to F. N. Malcolm, master of said vessel, and that he posted copies on the said vessel and on the court-house door.

E. B. SLIGH,
Office D. M.

Sworn to before me July 23, 1898.

RICHARD W. HUTSON,
Dep. C., D. C. U. S., S. C.

5 *Answer of James A. Farquhar to Original Libel.*

Filed Aug. 8, 1898.

District Court of the United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO. } In Prize.

Answer of James A. Farquhar, owner of steamship Newfoundland.

To the Honorable Wm. H. Brawley, district judge of the United States of America for the district of South Carolina:

The answer of James A. Farquhar, of Halifax, Nova Scotia, in the dominion of Canada, intervening for his interest in the steamship "Newfoundland," to the libel of the United States of America, answers and alleges as follows:

First. That this respondent is ignorant of the instructions from the President of the United States under which it is said M. R. S. MacKensie, alleged to be of the United States Navy, in and with the United States ship of war Mayflower, her officers and crew, did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the ship or vessel called the Newfoundland, of 557 registered tons, with a cargo on board of the same, and commanded by Captain Frederick Malcolm, but respondent admits that said seizure and capture was made on the date named and on the

high seas of said vessel with a cargo on board; that said ship is called the Newfoundland and is of 567.8 registered tons, and
6 was at the time of said capture commanded by Captain Frederick N. Malcolm, and that the ship so captured was claimed to have been seized as prize of war.

This respondent denies on information and belief that said ship and her cargo or either of them are or were ever lawful prize of war, and denies on information and belief that said ship was captured in attempting to violate the blockade which had been proclaimad by the President of the United States to exist at the port of Havana, Cuba, as is alleged in the said libel, such information being derived from the statements to this respondent of Messrs. Musgrave & Co., the charterers of said steamship, and of Captain Frederick N. Malcolm, master of the said ship; and of his own knowledge, as owner, respondent denies that there was any intention on his part in appointing Frederick N. Malcolm master of said steamship, in chartering said steamship to Musgrave and Company, or in permitting her to sail from Halifax under his charter-party, or in any other matter or thing said or done by respondent, to have said steamship violate the law of nations or to run the blockade proclaimed by the President of the United States as to the ports of Cuba; and, on the contrary thereof, respondent, knowing that such blockade had been proclaimed as to certain ports in the island of Cuba, stipulated in the charter-party of said steamship made with Mess. Musgrave and Company that said ship should engage only in lawful trade between Nova Scotia and ports of other countries, and deponent especially instructed and warned the said Frederick N. Malcolm not to attempt to take his ship, the said steamship Newfoundland, into any blockaded port, and from all that respondent knows and has been informed the said Frederick N. Malcom did not attempt nor
7 intend to attempt to enter the port of Havana, as charged in the libel, nor any other blockaded port whatsoever.

Second. This respondent is informed and believes it to be true that the blockaded had been proclaimed by the President of the United States to exist at the port of Havana, Cuba, but he is wholly ignorant as to whether said blockade was then rendered effective by the naval forces of the United States.

Third. This respondent admits that said ship and cargo have been brought into the port and harbor of Charleston, and that they are now there, within the jurisdiction of this court, but respondent denies that the said vessel is lawful prize of war, and denies that said vessel is subject to be condemned and forfeited to the United States as such prize of war.

Fourth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to decree restitution of respondent's ship, and to allow his damages and costs to this respondent, and otherwise law and justice to administer in the premises.

THEODORE G. BARKER,
Proctor for Respondent.
J. A. FARQUHAR.

Sworn to before me, at Charleston, S. C., this 8th day of July, A. D. 1898.

D. B. GILLILAND,
Notary Public for S. C.

[SEAL.]

8 *Answer of David Robertson & Co. to Original Libel.*

Filed Aug. 8, 1898.

District Court of the United States of America, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMER NEWFOUNDLAND and HER CARGO. } In Prize.

Answer of David Robertson & Co., claimants of cargo.

To the Honorable Wm. H. Brawley, judge of the district court of the United States for the district of South Carolina:

The answer of David Robertson and Company, of Montreal, Canada, intervening for their interest in the cargo of the steamship "Newfoundland," to the libel of the United States of America, answers and alleges as follows:

First. That these respondents know nothing of the alleged instructions of the President of the United States, under which it is said M. R. S. Mackenzie, alleged to be of the United States Navy, in anwith the United States ship of war Mayflower, her officers and crew; did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the ship or vessel called the Newfoundland, of 557 registered tons, with a cargo on board of the same, and commanded by Captain Frederick Malcolm, but respondents admits that said seizure and capture was made, on the date named and on the high seas, of said vessel with a cargo on board; that said ship is called the Newfoundland and is of 557.8 registered tons, and was at the time of said capture commanded by Captain Frederick N. Malcolm, and that the
9 ship as captured was claimed to have been seized as prize of war. These respondents deny on information and belief that said ship was captured in attempting to violate the*b* blockade which had been proclaimed by the President of the United States to exist at the port of Havana, Cuba, as is alleged in the said libel, such information being derived from the statements of Captain Frederick N. Malcolm, master of the said ship; and of their own knowledge these respondents deny that there was any intention on their part to have the said steamship or her master violate the blockade proclaimed by the President of the United States as to the ports of Cuba, and, on the contrary thereof, respondents knowing that such blockade had been proclaimed as to certain ports of the island of Cuba, and that other ports of said island had been left open and

free from blockade, had given to Captain Frederick N. Malcolm, master of said steamship Newfoundland, instructions to clear said cargo for the ports of Kingston, island of Jamaica, and of Vera Cruz, Mexico, but to enter and land said cargo at the port of Caybairien or the port of Sagua la Grande, island of Cuba, provided said ports or either of them should by him be found to be open and not blockaded, but if said ports should be found to be blockaded, to convey said cargo to the port of Kingston, island of Jamaica, and there await orders.

Respondents further say that at the time when said cargo was shipped, as they were informed and believe, the said ports of Caybairien and Sagua had not been declared to be blockaded ports.

Respondents further say that from all that respondents know and have been informed the said master of said steamship did not attempt nor intend to attempt to enter the port of Havana, as charged in the libel.

Second. These respondents are informed and believes it to
10 *to* be true that the blockade had been proclaimed by the President of the United States to exist at the port of Havana, Cuba, but they are wholly ignorant as to whether said blockade was then rendered effective by the naval forces of the United States.

Third. These respondents admit that said ship and cargo have been brought into the port and harbor of Charleston, and that they are now there, within the jurisdiction of this court, but respondents deny that the said cargo is lawful prize of war, and deny that said cargo is subject to be condemned and forfeited to the United States as such prize of war.

Fourth. That all and singular the premises are true.

Wherefore respondents pray that this honorable court would be please- to pronounce against the libel aforesaid and to decree restitution of respondent's goods, being the cargo of the said steamship Newfoundland, and to allow *them* damages and costs to these respondents and otherwise law and justice to administer in the premises.

THEODORE E. BARKER,
Proctor for Respondents.

11 DISTRICT OF SOUTH CAROLINA, }
County of Charleston. }

Frederick N. Malcolm, being sworn, says that he is master of the steamship Newfoundland, and as such the bailee of the cargo of said steamship and agent of the owners of said cargo, viz., the firm of David Robertson and Company, of Montreal, Canada; that the members of said firm are absent from the district, being, as deponent believes, all in the Dominion of Canada; that the above libel is true according to the best of his knowledge and belief.

F. N. MALCOLM.

Sworn to before me this — day of August, A. D. 1898.

D. B. GILLILAND,
Notary Public, S. C.

[SEAL.]

12 *Decree.*

Filed Aug. 15, 1898.

District Court of the United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP "NEWFOUNDLAND" and HER CARGO. } In Prize.

This cause came on to be heard on the proof taken *in preparatorio*. After argument of the district attorney on the side of the Government and of the proctor for the respondents, The Steamship and Her Cargo, the court having reached the conclusion that the testimony does not warrant an order releasing the vessel, and the evidence not being satisfactory, it is—

Ordered, adjudged, and decreed that either party have leave to take further proof as he may be advised.

In case the United States district attorney decides to take further proof on behalf of the Government, such proof shall be taken and concluded, and thereupon the respondent- shall, if so advised, take their further proof, with leave to the libellant to take further proof in reply.

Such further proof to be taken in accordance with the rules and practice of courts of admiralty and prize. The district attorney having moved to amend the libel, it is—

Ordered that the libel be amended as follows: "By striking out the words 'in attempting to violate the blockade which had been proclaimed by the President of the United States to exist at the port of Havana, Cuba, and which was then rendered effective by
13 the naval forces of the United States,'" and that the respondents have leave to amend their respective answers after receiving copies of the amended libel, served on their proctors.

WM. H. BRAWLEY,
U. S. Judge.

August 15, 1898.

14 *Opinion.*

Filed Aug. 17, 1898.

UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court. In Admiralty.

THE UNITED STATES
vs.
THE "NEWFOUNDLAND." } Opinion.

BRAWLEY, *District Judge:*

The British steamship Newfoundland, Frederick N. Malcolm, master, cleared from Halifax, Nova Scotia, July 8th, 1898, for Kingston, Jamaica, and Vera Cruz, Mexico. She carried a cargo of flour, pork, corn, wheat, and canned goods shipped by David Robertson & Co. Bills of lading were issued to them for 4,386 packages for Kingston and 3,747 for Vera Cruz. These bills of lading are endorsed by them in blank. The charter-party was for a voyage of three months to ports of the United States, West Indies, Central and South America, &c., in the customary printed form, and written therein was "including open Cuban ports, no contraband of war to be shipped," and was to terminate at Halifax. Musgrave & Co. were the charterers. She was captured near Havana by the United States ship of war Mayflower and sent to the port of Charleston as prize of war, was libelled, and the testimony of the master, mate, and seamen was duly taken *in preparatorio* by the prize commissioners and the cause is now before the court upon that testimony and upon
15 the ship's papers. By the well-settled practice no other testimony can be considered upon this hearing, and it is for the court to determine whether upon such testimony alone there is sufficient ground for condemnation or discharge.

Test affidavits and answers have been filed by James A. Farquhar as claimant of the ship, and by David Robertson & Co. as claimants of the cargo.

The libel charges that the vessel was captured as prize of war "in attempting to violate the blockade at Havana," and it has been argued with much force that inasmuch as a distinct and specific charge has been articulated in the libel to which the claimants have answered, no other ground for forfeiture can be considered, upon the familiar principle that in all admiralty proceedings the decree must be *secundum allegata et probata.* As it will hereinafter appear that the decision does not turn upon it, the question will be pretermitted whether the words above quoted may not be rejected as surplusage, but it may be as well to say that the accepted form of libel in prize cases is such as states in general terms that the vessel captured is prize of war. The Empress, 8 Federal Cases, page 691; Benedict's Admiralty, page 612.

It appears from the master's testimony that he was instructed by the charterers to follow the directions of the shippers of the cargo, and he received from Robertson & Co., through the former captain, verbal instructions to clear for Kingston and Vera Cruz, and to proceed with all haste to the north coast of Cuba, and to enter either the port of Sagua la Grande or Caibairien, but on no account to enter any blockaded port, and if he found the ports of Sagua and Caibairien blockaded, to proceed to Kingston and wire for instructions. It seems clear from this testimony that it was the
16 intention of the shippers that the cargo was to be landed at Sagua or Caibairien, where the master was instructed that he would be met by pilots, and that Kingston and Vera Cruz were "contingent" or provisional destinations. Neither Sagua nor Caibairien were included among the Cuban ports in either of the President's proclamations notifying a blockade.

The Newfoundland sailed from Halifax on July 9th. Her speed is about 8 knots; her registered tonnage, 567 tons. She steered for the "Crooked Island passage" in the Bahamas. Passing thence into the "Old Bahama channel" and going in the direction of Sagua and Caibairien, she reached a point northwestwardly from Nuevitas, on the north coast of Cuba, where she was stopped by the United States ship of war Badger at 12.45 a. m. on Monday, July 18th. Her papers were examined by the boarding officer, who informed the master that the whole island of Cuba was blockaded, and was allowed to proceed upon her course.

The island of Jamaica lies almost due south from Nuevitas, which, being about 200 miles from the eastern end of the island of Cuba, it is contended that the Newfoundland should at that point have changed her course and proceeded eastward around Cape Maysi and thence to Kingston. This, undoubtedly, would have been the shortest course, and if Kingston was the destination the sailing westward from Nuevitas would have carried the ship many hundreds of miles out of her course. It may be here observed that on the log book kept by the mate the line at the head of each page up to and including Monday, 18th July, is "Journal from Halifax, N. S., towards Kingston and Vera Cruz." On Tuesday, 19th July, the head line is "Journal from Halifax, N. S., towards Vera Cruz and Kingston." If
17 after reaching Nuevitas there was an intention to go to Vera Cruz, the westwardly course would be the most direct. It is earnestly contended by the attorney for the Government that the sailing in the direction of Sagua and Caibairien after notice by the officer of the Badger that those ports were blockaded is ground of forfeiture, and in support of such contention he cites the Vrow Johanna, 2 Rob., 91, and the Neptunus, 2 Rob., 92. These cases are sufficient authority to the point that the act of sailing for a blockaded port after receiving notification of the blockade is a breach of the blockade. These were cases of blockade by notification. Sir William Scott, in the Neptunus, says, "In the case of a blockade *de facto* only it may be otherwise." In case of a blockade by notification he says, "It is to be presumed that the notification

will be formally revoked, and until that is done the port is to be considered as closed up, and from the moment of quitting to sail on such a destination the offence of violating the blockade is complete and the property engaged in it subject to confiscation. It may be different in a blockade existing *de facto* only; there no presumption arises as to continuance, and the ignorance of a party may be admitted as an excuse for sailing on a doubtful and provisional destination."

In the Circassian, 2 Wall., 135, Chief Justice Chase says, "It is a well-established principle of prize law * * * that sailing from a neutral port with intent to enter a blockaded port and with knowledge of the existence of the blockade subjects the vessel, and in most cases its cargo, to capture and condemnation. We are entirely satisfied with this rule. It was established with some hesitation when sailing vessels were the only vehicles of ocean com-
18 merce; but now, when steam and electricity have made all nations neighbors and blockade-running from neutral ports seems to have been organized as a business and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights."

In the case of the Admiral, 3 Wall., 603, the ship sailed for Savannah after notice of the blockade, and was captured "near the blockaded port, and when heading for the land and when in point of fact she was in the act of entering the port."

The facts here clearly distinguish this case from that of the "Admiral," there being no testimony tending to show any attempt to enter either Sagua or Caibairien. Sailing for a blockaded port and sailing by a blockaded port are very different. No case has been cited to support the view that the sailing in the direction of a port not blockaded by notification, but which is reported to be blockaded *de facto*, is of itself without more a breach of the blockade.

Chief Justice Chase in the Circassian, page 150, takes note of the distinction between simple and public blockades. "A simple blockade may be established by a naval officer acting upon his own discretion or under the direction of superiors without governmental notification, while a public blockade is not only established in fact, but is notified by the Government directing it to other governments. In the case of a simple blockade the captors are bound to prove its existence at the time of capture, while in the case of a public blockade the claimants are held to proof of discontinuance in order to protect themselves from the penalties of attempted violation."

To subject the Newfoundland to confiscation for passing
19 near and by the ports of Sagua and Caibairien, after he had received notice from the boarding officer of the Badger that these ports were in fact blockaded, the Government should show that the blockade as established by the naval officers on that station at Sagua and Caibairien was still in existence, and some act on the part of the Newfoundland indicating an intention to enter those ports or one of them. The record contains no testi-

mony on either point, and the contention of the Government that she should be condemned on this ground, being supported by neither proof, reason, nor authority, must fail.

Passing by Sagua and Caibairien, ports which appear on the maps as lying to the westward of the middle of the island, the Newfoundland was next boarded by the U. S. coast guard ship Hudson about 11.30 a. m., on Tuesday, July 19th, off Cardenas. Her papers were examined and she was allowed to proceed. At 6.20 p. m. of same day she was boarded by an officer of the U. S. S. Tecumseh, was warned not to approach any nearer the island of Cuba or to attempt to enter any port. This warning was entered upon the log and she was allowed to proceed, passing on in a westward course. The log contains this entry: "8.30 p. m., Havana light bearing south ten miles;" and the master's testimony is that at 10.05 p. m. a gun was fired from the Mayflower and his ship was seized at a point 21 miles north-northwest half west from Havana light.

In answer to the interrogatory, "For what reason or on what pretence was the seizure made?" the master says: "Captain Mackenzie (who commanded the Mayflower) said the ship was out of her course for either Vera Cruz or Kingston. I protested against the seizure, saying so far as I know I had not violated the blockade law. He then asked some one on board—I don't know who he was—what they had on board the Mayflower about the Newfoundland. A letter was brought to him, and after he read he told me he had information by or through the United States consul at Halifax to the effect that the Newfoundland had left Halifax with the intention of running the blockade to Cuba or Havana—I don't know for certain which—and for that reason he would have to send me in."

The testimony of the chief mate as to the time, place, and circumstances of the seizure accords with that of the master. He gives the bearing of Havana light as southeast by south half south 21 miles, and says they were about 13 or 14 miles off shore.

A typewritten sheet of paper containing the following statement by Commander Mackenzie is pasted in the log book:

U. S. S. MAYFLOWER,
OFF HAVANA, CUBA, *July* 19, 1898.

July 19, about 8.30 p. m., the Mayflower, then being about eight miles north of Morro light, Havana, started in chase of a faint light to the northward, which was only occasionally visible. The chase occasionally changed course two or three times and was finally brought to about 10.30 p. m., about 17 miles north-northwest of the Morro. She had been warned by the Tecumseh about 6 p. m. (four hours and a half before we brought her to), and previously by the Badger. She was out of her shortest course either for Jamaica or Vera Cruz, for both of which places she had clearance. The conduct of the vessel was so suspicious that I feel obliged to send her to the nearest healthy port.

M. R. S. MACKENZIE,
Commander U. S. Navy, Commanding U. S. S. Mayflower.

21 The proctor for claimant urges that this statement cannot be considered upon this hearing, which is confined to testimony of persons aboard and to the ship's papers, and the point seems to be well taken. An entry in the log of a captured ship stating the fact that the ship was boarded or warned or captured at a time stated imports verity and may be considered as so far a part of the ship's papers as to be properly cognizable upon the preliminary hearing, but inasmuch as an officer of the capturing ship could not, upon such hearing, be heard to testify concerning the circumstances of such capture and the reasons therefor, it does not seem to the court that a written statement of such character, not under oath and attached to the ship's papers, is a part thereof which, under the practice, is to be considered.

Taking the testimony which alone is now before the court, there is nothing in it which shows or tends to show that the Newfoundland, at the time of capture or at any other time, was heading for the port of Havana or any other port.

The cases cited by the district attorney in support of a sentence of condemnation will now be examined.

In the Circassian, 2 Wall., 151, the court says: "At the time of the capture ship and cargo were on their way to New Orleans (the blockaded port), under contract that the cargo should be discharged there and not elsewhere, and that the blockade should be forced in order to the fulfilment of that contract." The charter-party contained an express stipulation that she was to "run the blockade if so ordered by the freighters." With this charter-party was a memorandum of affreightment, by which Soubry, the agent, engages

22 "that the merchandise shall not be disembarked except at New Orleans, and to this effect he engages to force the blockade." Numerous letters were found aboard, written to correspondents in New Orleans, in which the steamer is spoken of as "loaded entirely with our products for New Orleans," as being a fast sailer and being intended "to convey to your place, New Orleans, by forcing the blockade, a very fine cargo," etc., etc., and it was also proved that at the moment of capture the captain ordered the destruction of a package of letters which the court says would be a strong circumstance, and taken in connection with others, "it irresistibly compels belief of guilty intent at the time of sailing and time of capture."

In the Cornelius, 3 Wall., 225, the court says that the master "made every effort to escape by crowding sail and running in towards the blockaded port."

The steward testified "that the master told him that he had intended to run the blockade from the first," and there were other circumstances of suspicion in the character and conduct of the charterer and supercargo, etc., etc.

In the Admiral, 3 Wall., 616, the facts have already been referred to. She was heading for the land and in the act of entering the blockaded port for which she had sailed after notice of the blockade.

In the Cheshire, 3 Wall., 233, one of the owners and a claimant

was a partner of an enemy, who resided in Savannah, and the cargo was condemned as enemy's property. The ship had run the blockade on her outward voyage; she knew of the blockade before she sailed; she was captured off Savannah, and claimed that she had called there merely for the purpose of inquiry, and the court held that the circumstances had "the appearance of a device
23 to cover up a settled purpose to elude the blockade."

The Herald, 3 Wall., 768, was a case where the vessel was captured in attempting to escape from a blockaded port, and the court, after reviewing the facts, says: "It would be difficult to make more conclusive proof of the existence of the blockade or of notice of the fact to the master of the captured vessel."

The Rising Sun, 2 Rob., 87, was an American vessel, sailing from a French port, ostensibly to Altona, but in reality bound to Guernsey. Sir William Scott says: "It is well known that although it is the ordinary form of clearing out of a belligerent country to bear an ostensible destination to a neutral port, yet no one imputes that as a fraud, nor is it considered such an act as would justly subject neutral property on board neutral ships to be molested on that account." The real question in that case was as to the effect of the spoliation of papers.

The Hurtige Hane, 2 Rob., 103, was the case of a ship actually entering a blockaded port, and the defence set up was that she went in from distress and want of water. The only question considered was as to how far such pretences could avail.

The Calypso, 2 Rob., 129, was the case of an attempt of a neutral to cover enemy's property, a case which Sir William Scott declared to be "poisoned with fraud in every vein." No question arose therein pertinent to the case now under consideration.

These are all of the cases cited by the counsel for the Government, and the pressure upon the court has been so great that it has had but little time for independent investigation. So far as its examination has extended, no case has been found where a sentence of condemnation was passed upon such a state of facts as is
24 presented in this record. How far short the cases cited fall in showing cause for condemnation, the circumstances hereinabove recited demonstrate. These circumstances do no more than create a suspicion that there was an intention to enter a Cuban port in violation of the blockade; but suspicion, however well founded, is not proof, and cannot be accepted in any court in place of evidence.

There must be some overt act denoting an attempt to do the thing forbidden, some fact in addition to the proved intention to commit the infraction, which shows that the unlawful intent is persisted in and is being carried into execution.

As this court has in a recent case had occasion to remark, the testimony *in preparatorio* rarely affords opportunity for such proof. From the master's testimony it appears that Commander Mackenzie informed him that he had information, through a letter from the American consul at Halifax, that the Newfoundland sailed with intention to run the blockade. The court can form no opinion as

to the probable weight of such testimony. It also appears that Commander Mackenzie thought the movements and conduct of the Newfoundland on the night of the capture suspicious. The court has personal acquaintance with Commander Mackenzie, and knows that in character, intelligence, and attainments he is the peer of any officer of the navy; but, highly as it values his opinion, it cannot accept it in lieu of proof; it furnishes ground for ordering further evidence.

In the Sir William Peel, 5 Wall., 534, the Chief Justice, after stating the rule that upon the first hearing no evidence is admissible except that which comes from the ship, either in the papers or the testimony of persons found on board, says: "If upon this evidence the case is not sufficiently clear to warrant condemnation or
25 restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof."

An order has accordingly been entered allowing further proof, and as that will probably involve delay, an order will be entered, if moved, for the discharge of the ship and cargo upon stipulation for their value.

File this opinion.

WM. H. BRAWLEY,
U. S. Judge.

August 17th, 1898.

26 *Amended Libel.*

Filed Aug. 17, 1898.

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the District Court. In Admiralty.

To the Honorable William H. Brawley, judge of the district court of the United States for the district of South Carolina:

The libel of Abial Lathrop, attorney of the United States for the district of South Carolina, who libels for the United States and for all parties in interest against the ship or vessel called the Newfoundland, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges—

That, pursuant to instructions from the President of the United States, M. R. S. Mackenzie, of the United States Navy, in and with the United States ship of war the Mayflower, her officers and crew, did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said ship or vessel called the Newfoundland, of 557 registered tons, with a cargo on board of the same, and commanded by Captain Frederick Malcolm, and that the said ship and cargo have been brought into the port and harbor of Charleston, in the State of South Carolina, where the same now are

within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the
27 proper process of this court, be duly notified of the allegations and prayer of this libel, and called to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said vessel the Newfoundland, together with her tackle, apparel, furniture, and cargo, may, on the final hearing of this cause by the definitive sentence and decree of this court, be condemned, forfeited, and sold as prize of war, and the proceeds distributed according to law.

(S'g'd) ABIAL LATHROP,
United States Attorney.

Acceptance of Service.

CHARLESTON, S. C., *Aug.* 17, 1898.

I accept service of the within amended libel.
THEODORE G. BARKER,
Proctor for Respondent.

28 *Exceptions of D. Robertson & Co. to Decrees of Aug.* 15 & 17, '98.

Filed Aug. 19, 1898.

District Court of the United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO. } In Prize.

Exceptions of respondents David Robertson and Company, owners and claimants of the cargo of the British steamship Newfoundland, to the decree of the district court filed August 15th and 17th, 1898.

The respondents David Robertson and Company, owners and claimants of the cargo of the steamship Newfoundland, except to the decree and orders of the district court in above-entitled cause on the following grounds:

First. Upon the testimony *in preparatorio* the court should have released the cargo, the evidence showing that no act or acts were done by the said owners of the cargo, British subjects and neutral as between the United States of America and the Kingdom of Spain, or were suffered by them or by their authority to be done or committed, directly or indirectly, to justify the seizure or condemnation of the vessel or cargo as prize of war.

Second. Upon the facts as found by the court the district court should have released the vessel and cargo.

Third. The proof as found by the court showed no act or acts done or committed by the master of the vessel or her owner, charterers, or freighters, in violation of the law of war or of the blockade in question, to which acts suspicious circumstance or circum-
29 stances could be attached so as justly to constitute the vessel or her cargo lawful prize of war.

Fourth. The facts established by the proofs *in preparatorio* and found by the court disclosed no ground upon which a reasonable doubt could be raised of any action rendering the vessel or cargo lawful prize of war.

Fifth. The facts established by the proofs *in preparatorio* and found by the court showed no ground upon which a reasonable doubt could be raised of intention on the part of the master or of the owner of the vessel, of the charterers of the vessel or of the owner of the cargo, to run the blockade or to enter or attempt to enter any blockaded port in the island of Cuba, or otherwise to violate the laws of war.

Sixth. In the absence of all legal proof of any ground for reasonable doubt as to the acts and intention of the master of the vessel, her owner, charterers, or freighters, and of circumstances of suspicion coupled with any hostile or unlawful act or acts, the district court had no legal foundation for refusing to order the release of the vessel and cargo.

Eighth. The district court should not, after the hearing
30 upon the libel, answer, and proofs, have entertained or granted a motion of the district attorney to amend the libel by striking out the words mentioned in the order and decree upon which allegations of the libel the issues had been made and joined and upon which arguments had been made and the hearing had.

Ninth. The district court should not, by its decree granting the leave to amend and to take further proof and allowing new pleadings to be framed, have allowed new proof to be taken thereon.

Tenth. The district court should not, by granting leave to the Government to amend its libel at or after the hearing, have allowed the captors to make a case differing from that upon which the vessel and her cargo had been taken and the respondents had been summoned to make and had made their defense.

THEODORE G. BARKER,
Proctor for Respondents.

Exceptions overruled.

WM. H. BRAWLEY, *U. S. Judge.*

Sept. 17, 1898.

31 *Exceptions of J. A. Farquhar to Decrees, Aug.* 15 & 17, '98.

Filed Aug. 19, 1898.

District Court of the United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO. } In Prize.

Exceptions of respondent James A. Farquhar, owner and claimant of the British steamship Newfoundland, to the decree of the court in above entitled cause filed the 15th and 17th days of August, 1898.

The respondent James A. Farquhar, owner and claimant of the steamship Newfoundland, excepts to the decrees and orders of the dtstrict court in above-entitled cause on the following grounds:

First. Upon the testimony *in preparatorio* the court should have released the vessel, the evidence showing that no act or acts were done or committed by the owner, a neutral British subject, or suffered by him or by his authority to be done or committed, directly or indirectly, to justify the seizure or condemnation of his vessel as lawful prize of war.

Second. Upon the facts as found by the court the district court should have released the vessel and cargo.

Third. The proof as found by the court showed no act or acts done or committed by the master of the vessel or her owner, charterers, or freighters, in violation of the laws of war or of the blockade in question, to which acts any suspicious circumstance or circumstances could be attached so as justly to constitute the vessel
32 or her cargo lawful prize of war.

Fourth. The facts established by the proofs *in preparatorio* and found by the court disclosed no ground upon which a reasonable doubt could be raised of any action rendering the vessel lawful prize of war.

The facts established by the proofs *in preparatorio* and as found by the court showed no ground upon which a reasonable doubt could be raised of intention on the part of the master or of the owner of the vessel, of the charterers of the vessel, or of the owner of the cargo, to run the blockade, or to enter or attempt to enter any blockaded port in the island of Cuba, or otherwise to violate the laws of war.

Fifth. In the absence of all legal proof of any ground for reasonable doubt as to the acts and intention of the master of the vessel, her owner, charterers, or freighters, and of circumstances of suspicion coupled with any hostile or unlawful act or acts, the district court had no legal foundation for refusing to order the release of the vessel and cargo.

Seventh. The district court should not, after the hearing upon the libel, answer, and proofs, have entertained or granted a motion of the district attorney to amend the libel by striking out the
33 words mentioned in the order and decree upon whic[h] allegations of the libel the issues had been made and join[ed] and upon which arguments had been made and the hearing had.

Eighth. The district court should not by its decree, by granting the leave to amend and to take further proof, have allowed new pleadings to be framed and new proof to be taken thereon.

Ninth. The district court should not, by granting leave to the Government to amend its libel at or after the hearing, have allowed the captors to make a case differing from that upon which the vessel and her cargo had been seized, upon which the proof *in preparatorio* had been taken and the respondent had been summoned to make and had made his defense.

THEODORE G. BARKER,
Proctor for Respondents.

Exceptions overruled.

WM. H. BRAWLEY, *U. S. Judge.*

17 Sept., 1898.

34 *Answer of J. A. Farquhar to Amended Libel.*

Filed Aug. 19, 1898.

District Court of United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO. } In Prize.

Answer of respondent James A. Farquhar to the amended libel.

To the Honorable Wm. H. Brawley, judge of the district court:

The answer of James A. Farquhar, of Halifax, Nova Scotia, intervening for his interest in the steamship Newfoundland, to the amended libel of the United States of America answers and alleges as follows:

First. Respondent reserves to himself the benefit of his exceptions, filed this day, to the decrees and orders of this court filed the 15th and 17th of August, 1898, and all further and other right of exception to the said decree and orders and to the amended libel.

Second. Respondent says that the said amended libel states no fact beyond the bare facts that M. R. S. Mackenzie, of the United States Navy, in and with the United — ship of war Mayflower, her officers and crew, did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as prize of war the ship or vessel called the Newfoundland, with a cargo on board the same, and

commanded by Captain Frederick Malcolm, and that the said ship and cargo have been brought into the port and harbor of Charleston, in the State of South Carolina, where the same now are
35 within the jurisdiction of this court; which facts are notorious, indisputable, and undisputed and set forth no cause of action against the said ship or her cargo or this respondent upon which issue can be made or to which respondent can interpose any plea in law.

Third. That the allegation that the said vessel and cargo are lawful prize of war is not a statement of fact, but is a statement of a mere conclusion of law to which no plea or answer can be made or framed.

Fourth. That said allegation, in not stating upon what ground or accusation of criminal act or intent, or upon what act or acts alleged to be done or committed by said master or said vessel or cargo or by the owners of either, in violation of the belligerent rights of the United States or of the laws of war, constituting said vessel and cargo or either of them lawful prize of war, libelant is proceeding, presents no issue which this respondent can meet by plea or answer, and respondent excepts thereto as wholly insufficient in law.

Fifth. That said allegation that said vessel and cargo are lawful prize of war is a mere statement of a conclusion of law, and is wholly vague and uncertain and cannot be met by plea or answer, and respondent excepts thereto as wholly insufficient in law.

Sixth. Respondent denies that said vessel and cargo and either of them are or is lawful prize of war.

Seventh. Respondent denies that the said master of the steamship Newfoundland or her owner or the owners of her cargo have cojointly or severally done or committed, or permitted to be done or committed by his or their authority any act or acts which would make said ship or her cargo lawful prize of war or legally
36 subject her or it to just condemnation as prize of war.

Eighth. That all and singular the premises are true. Wherefore respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid and to decree restitution of respondent's vessel, the Newfoundland, and to order and decree damages and costs against the captors to this respondent and otherwise law and justice to administer in the premises.

THEODORE G. BARKER,
Proctor for Respondents.

Sworn to before me at Charleston this 19th day of August, A. D. 1898.

ED. H. MOFFETT,
Notary Public for S. C.
J. A. FARQUHAR.

37 *Answer of David Robertson & Co. to Amended Libel.*

Filed Aug. 19, 1898.

District Court of the United States, District of South Carolina. In Admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO. } In Prize.

Answer of respondents David Robertson and Company to the amended libel.

To the Honorable Wm. H. Brawley, judge of the district court:

The answer of David Robertson and Company, of Montreal, Canada, intervening for their interest in the cargo of the steamship Newfoundland, to the amended libel of the United States of America answers and alleges as follows:

First. Respondents reserve to themselves the benefit of their exceptions filed this day to the decree and orders of this court filed the 15th and 17th of August, 1898, and all further and other right of exception to the said decree and order and to the amended libel.

Second. Respondents say that the said amended libel states no fact beyond the bare facts that M. R. S. McKenzie, of the United States Navy, in and with the United States ship of war Mayflower, her officers and crew, did, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the ship or vessel called the Newfoundland, with a cargo on board the same, and commanded by Captain Frederick Malcolm, and that the said ship and cargo have been brought into the port and harbor of
38 Charleston, in the State of South Carolina, where the same — within the jurisdiction of the court, which facts are notorious, indisputable, and undisputed, and set forth no cause of action against the said ship or her cargo or these respondents upon which issue can be made or to which respondents can interpose any plea in law.

Third. That the allegation that the said vessel and cargo are lawful prize of war is not a statement of fact, but is a statement of a mere conclusion of law, to which no plea or answer can be made or framed.

Fourth. That said allegation, in not stating upon what ground or accusation of criminal act or intent or upon what act or acts alleged to be done or committed by said master or said vessel or cargo or by the owners of either in violation of the belligerent rights of the United States or of the laws of war libelant is proceeding, constituting said vessel and cargo lawful prize of war, presents no issue which these respondents can meet by plea or answer, and respondents except thereto as wholly insufficient in law.

Fifth. That said allegation that said vessel and cargo are lawful prize of war is a mere statement of a conclusion of law and is wholly

vague and uncertain and cannot be met by plea or answer, and respondents except thereto as wholly insufficient in law.

Sixth. Respondents deny that said vessel and cargo and either of them are or is lawful prize of war.

Seventh. Respondents deny that the said master of the steamship Newfoundland or her owner or the owners of her cargo have cojointly or severally done or committed or permitted to be done or committed, by his or their authority, any act or acts which
39 would make said ship or her cargo lawful — of war or legally subject her or it to just condemnation as prize of war.

Eighth. That all and singular the premises are true.

Wherefore respondents pray that this honorable co*uld* would be pleased to pronounce against the libel aforesaid, and to decree restitution of respondents' cargo, and to order and decree damages and costs against the captors to these respondents, and otherwise law and justice to administer in the premises.

THEODORE G. BARKER,
Proctor for Respondents.

STATE OF SOUTH CAROLINA, }
County of Charleston. }

Before me personally appeared Frederick Malcolm, who, being duly sworn, says that he is master of the steamship Newfoundland, and as such is bailee of said ship and her cargo; that the owners of said cargo are Robertson and Company, who reside in Montreal, Canada, and are absent from the district; that said answer is true to the best of deponent's knowledge and belief.

F. N. MALCOLM,
Master S. S. Newfoundland.

Sworn to before me this 19th day of August, A. D. 1898, at Charleston, in said State.

GEORGE H. MOFFETT,
Notary Public for S. C.

40 *Testimony of Capt. F. N. Malcolm in Preparatorio.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

THE UNITED STATES }
vs.
THE NEWFOUNDLAND. }

Deposition of Captain Frederick Newton Malcolm, a witness produced, sworn, and examined *in preparatorio* on the 27th day of July, 1898, at the city of Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, said witness having been produced for the purpose of such examination by the U. S. attorney in behalf of the captors of a certain ship or vessel called the Newfoundland and her cargo.

To the 1st interrogatory deponent answers: I was born at Chev-

erie, Hants county, Nova Scotia, and I now live at # 370 Gottingen street, Halifax, N. S. I have lived there about 6 years; I won't be exact as to the time. I am a British subject and I owe allegiance to Great Britain. I am not a citizen of the United States. I am a married man and my family and wife reside at # 370 Gottingen street, Halifax.

To the 2nd: I was present at the capture and taking of the vessel.

To the 3rd: The ship was seized on July 19th. When they fired the gun it was five minutes past ten p. m. on board our ship. It was 21 miles north-northwest half west from Havana light, and the vessel was carried into Charleston, S. C. The vessel had no
41 letters or commission authorizing her to make prizes. As I said before, she had none. There were different reasons alleged, but Captain McKensey, of the Mayflower, told me the reason he sent me in was because he had been informed either by or through the U. S. consul at Halifax that the Newfoundland left Halifax with the intention of running the blockade to Cuba. He gave me other reasons, but I considered that the principal reason in my estimation. He also alleged that we had no lights out; and he also alleged that we had altered our course at different times. That is what I remember now; no other reason.

4th. Under the British colors. I can't answer that question. I don't know what colors the ship has on board. I don't think she has any other national flag but the British, but I won't be positive. We had no other colors that I know of.

5th. No resistance was made at the time of capture. One gun was fired from the Mayflower by some one on board the Mayflower to me unknown. The capture was made by the Mayflower; at that time no other ships were in sight. Our vessel was a merchantman and I can't answer for the owner's name; on the register it is Anderson, but he is not the man who put me in the ship. I don't know who owns the ship; some person by the name of Anderson; his name appears on the register as managing owner; that is as far as I know. The capturing vessel was a vessel of war. I can't tell any of the particulars about her. I know she was an American (United States) vessel of war, the Mayflower.

6th. I suppose they had. I don't know about that part of it. The capture was made by the Mayflower, and the vessel seized has never been condemned to my knowledge.

42 7th. The Newfoundland and her master was Frederick Newton Malcolm. I was appointed by James A. Farquhar, late master, in Halifax, N. S. I have known the vessel about 5 years, and I have known him personally about two years and a half, thereabouts. July 1st of the present year, in Halifax, I took possession of the ship, and the ship was delivered to me by Captain Farquhar. I live at # 370 Gottingen street, Halifax, and I have lived there about 6 years. I am not positive about the time. I was born at Cheverie, Hants county, N. S., and I am a subject of Great Britain.

8th. I can't swear to the ship's tonnage. I think 568 tons, if my

memory serves me correctly. The vessel's company numbered 22 men, all told, and 22 were actually on board of her when she was taken. I think they are nearly all British subjects; most of them belong to Newfoundland, I think. I can only say for this voyage. I don't know when the other men came on board. Some of the men in the ship now have been in her some time. I don't know how long or how many of them. The men I shipped in Halifax all came on board at the same time—no, I am wrong there. I engaged 3 men in Halifax; they deserted the ship before she sailed, and I had to engage substitutes in their place in Halifax. I don't know the date. I think it was the 4th July. I engaged 21. By that I mean I signed them on the articles. Some of the men were on the ship. The way is this: The chief officer engages his own men, the chief engineer his own men, and the steward engages his men and I sign them on; that is what I mean by engaging them, by signing them on in the shipping office.

9th. Yes; I was master of the ship. No; I hadn't any interest in the ship, goods or merchandise ladened on her, otherwise than the interest of belonging to theship.

43 10th. I have known the vessel about 5 years; the first time I remember seeing her was in Halifax, N. S.; I can't answer as to the date; I don't remember. She carried no guns. There were 22 men on board. She was Canadian build; her name was the Newfoundland, and, as far as I know, she has had that name from the time she was built. I don't know of any other name, nor heard of any.

11th. She was bound to Kingston, Jamaica. The voyage began in Halifax. I don't know where the voyage was to have ended; I cannot tell you that. The ship was chartered for 3 months. I don't know where the voyage would have ended. She was carrying general cargo at the time of the first setting out, and she had it on board at the time of her capture. Her cargo consisted chiefly of flour, and the cargo was put on board in July, 1898. I don't know of any goods being on board contraband of war.

12th. No; none. She sailed from Halifax, and she had not arrived at her port of destination when she was taken; she had not called at any intermediate ports. Her voyage began at Halifax, and, according to the charter-party, I think the ship was to be delivered to her owners again in Halifax, although I am not positive. I cannot specify the cargo. We had general cargo, consisting chiefly of flour; also 200 barrels of pork, some corn, some wheat, and some canned goods, and none of the cargo has been delivered. She sailed from Halifax July 9, 1898, at 6 a. m., and made no other port.

13th. General cargo, consisting chiefly of flour, 200 barrels of pork, some corn, some wheat, and some canned goods. The same goods were on board when she was taken; the cargo was put on board in 1898, in the month of July. I said before I can't specify it

44 exactly. I have already stated the different species; the bulk is about 3,000 barrels of flour, and some in bags. I don't know how many bags; most of it in bags. I don't know how much canned goods there was, except that there was one car-load.

14th. The owner of the vessel, as far as I know, is Anderson; I don't know his first name. The owners of the cargo, I suppose, would be the shippers, but I don't know. The cargo is shipped by Robertson & Co., of Montreal. I know that Anderson's name appears on the register as managing owner. I don't know who were the owners. I know the shippers through the charterers, Musgrave & Co. I don't know what nationality or country any of them are by birth nor where they live, and I don't know where they reside or have resided or what State or country they are citizen- and subjects of.

15th. None that I know of; I don't know anything about it; I never saw anything like that at all.

16th. The lading was first put aboard of her in Halifax, July, 1898. The shippers were Robertson & Co., of Montreal. I only know the shippers; I don't know whether they owned the cargo or not. The consignee in Kingston is Turnbull & Co. or Turner & Co.; I think Turnbull. I don't know what countrymen they are; I have no knowledge whatever about them. It depended on circumstances where the cargo was to be delivered. The ship was chartered by Musgrave & Co. in Halifax; Robertson & Co. were the shippers. I was told by the charterers, Musgrave & Co., to carry out all the orders of instructions given by the shippers. About the time the ship was loaded I received a letter from Robertson & Co. It was not sent to me, it was sent to the captain of the ship who was in her previously. I got it with instructions, saying the ship had been chartered. I am not sure whether he said by Musgrace & Co. or himself, but he informed me he was the shipper, and he said that when I got my cargo on board to proceed with all haste. I am a little ahead. He told me first to clear the ship for Kingston and Vera Cruz, and to proceed with all haste to the north coast of Cuba and enter either the port of Sagua or Caibaren, and there to deliver my cargo to the orders of the shippers. If those ports were blockaded when I reached there, I was not to enter. I was on no account to attempt to enter a blockaded port. In the event of said ports being blockaded, I was to proceed to Kingston and wire them for instructions. As far as I know, the cargo was to be delivered for the benefit of Robertson & Co. I don't know whether any of the laders have any interest in the goods. I don't know anything about the quality of the goods or of the quantity, except as I have stated before. I don't know anything about whether the goods, if they shall be restored at the destined ports, will belong to the same persons. In making that statement about the orders I received I omitted to mention one thing which I do now. I was to ascertain, as early as I could, if those ports were blockaded, and I ascertained from the U. S. S. Badger that they were; that is all I can remember just now. I may remember more later on.

17th. I think there were 6 signed, 3 of each. They were true bills of lading and none were signed differently from those on the vessel. I signed the bills of lading from the mate's receipts; there were no other bills of lading.

18th. I had no other documents on board the ship relating to the

ship or cargo, in connection with this voyage, except the papers which I delivered up to the prize master, who sealed them all up; those were all the documents I had, in connection with this voyage, on board the ship. I have no other papers except those I de-
46 livered up, and I never saw such paper in any one's possession at all. I never have seen any other papers.

19th. I don't remember. I couldn't do that without the chart. I would have to consult the chart to give the latitude and longitude. It was on July 19, 1898, at 10.05 p. m., ship's time, near Havana, and it was not a port of the United States. There was a charter-party signed and executed for the present voyage, between Musgrave & Co. and J. A. Farquhar, about the 1st of July. I delivered it to the prize master, and he sealed it up with the other papers. I can't repeat word for word what is in the charter-party. I will tell you as near as I remember. It was a time charter. The ship was chartered by Musgrave & Co. for 3 months, to trade between any port or ports in the Dominion of Canada, the United States, West Indies, South or Central America, to and fro, as required, including open Cuban ports, and I think there is a clause there that says—that is, those ports that have not been declared blockaded—no contraband of war to be carried, charterer to insure vessel against capture. That is as near as I get at it. It is a very long document. That is the gist of it, as far as the places are concerned. There are a lot of other things I can't remembe-. The charterers were to furnish the coal for the ship and pay all port charges.

20th. The ship's register, the articles, the official log book, the mate's log book, manifest, bills of lading, copy of charter-party, that is all I can think of now, and none of them were destroyed or attempted to be destroyed.

21st. I know, of course, that Spain was at war with the United States, and I also knew that Havana was blockaded, but I consid-
ered I was outside the blockade line. I would just like to
47 say that at 6 o'clock the same evening I was boarded by an officer from the Tecumseh, and he told me not to come any further in shore or any nearer the shore, and he endorsed that in the mate's log book. It was at Kingston, Jamaica, that I first heard of the war and also that Havana was blockaded. It was about the time that the official notice of the blockade was given. I don't know the date. I saw it in the newspapers.

22nd. The vessel neither entered or attempted to enter the port. As I have already said, we neither entered the port or attempted to enter, but we received notice not to come any nearer in shore from the boarding officer of the Tecumseh. As I have stated, the register was endorsed by the boarding officer of the U. S. S. Badger, which spoke us off Nue Vitas; he endorsed the register something like this: I hereby certify I have this day boarded and examined the papers of the steamship Newfoundland and find the same to be correct. I think that is just about it, and his name was signed, Lieutenant Titus, U. S. S. Badger, Captain Snow commanding. That is as near as I can give it. There was no notice given to me in writing of any blockade. Of course, I understood that a blockade—in fact, the lieutenent from

the Badger said to me that the whole island of Cuba was blockaded, but he did not give it to me in writing. It was blockaded from one end to the other.

23rd. The register was examined by the boarding officer of the Badger, the boarding officer from the U. S. S. Hudson, the boarding officer from the Tecumseh. Previous to her capture the register was endorsed by the boarding officer of the Badger. In the mate's log book was endorsed by the boarding officer of the Tecumseh. I have stated all that I know in connection with that endorsing.

24th. No; I know of the ship's attempting to enter no
48 blockaded port at any time after notice had been given that the port was blockaded. I know of her sailing from a blockaded port; I have been told that she did, and I have every reason to believe it was correct from the information I received. I obtained it through the papers and also from the mate of the ship now. She entered Guantanamo, but there had been no notice given of the existing blockade when she entered, but when she got in there she was told she could not land the cargo and would have to clear out of there, and she sailed from that port. That was in June; I don't know the date. The ship, as far as I understand, was chartered to carry a cargo of sugar from Guantanamo to New York, and when she went in there the naval authorities, or whoever was in charge, would not allow her to come in the harbor; she would have to proceed to sea; the harbor was blockaded—that is, as far as I know; I wasn't in the ship; I only know it from the papers and by hearsay from the mate and others. I have fully disclosed all I know.

25th. Not that I know of. The vessel has never been seized or condemned as a prize except this present seizure.

26th. I hardly know how to answer that question. I have sustained no loss except what might be loss, in my owner's estimation, from getting the ship in trouble. I have sustained no other loss personally. As I said, the owners might blame me for getting the ship in trouble. I have received no indemnity or promise of satisfaction from any damage I have sustained or may sustain from this capture.

27th. The vessel is insured; I don't know anything about the cargo. The insurance was effected in London—Lloyd's; I don't know what the premium was. It was in July, previous to our sailing from Halifax on this voyage. I don't know whether it was effected by the charterers or the shippers.

28th. It would have been—as far as I know, the cargo
49 would have been—delivered to the order of the shippers in any port. I had no authority to sell the cargo; I don't know anything about the cargo in that respect.

29. The flour, as far as I know, came from Montreal. I know it came in there on the Intercolonial R. R. The pork came the same way, and the canned goods from there; the wheat and corn in the same way.

30th. All the cargo was taken from the cars, out of the cars on

the wharf, and put on board the ship directly—no transshipping—from deep water terminus, Halifax, in July, at different dates.

31st. I know of none.

32nd. No papers were delivered out of the said vessel except the papers I have already stated that I delivered to the prize master.

33rd. The bulk has not been broken since the ship was loaded.

34th. None; there were none on board, and no officers, soldiers, or mariners secreted on board of the ship. I don't know whether we have any U. S. citizens on board or not; I think we had one; he was not secreted or confined; he was a member of the crew; there were not to his knowledge on board citizens of the United States, or Territories of the U. S., then in a state of war against the United States, its government and laws.

35th. They are all true documents on board the ship; I don't know of any — or circumstances to affect their credit. We have no pas-ports or sea briefs. I don't know anything about any passports or sea briefs. I don't know that any person on board had a passport or license or letter of safe conduct. I have signed bills of lading. I don't remember writing any letters, but I have sent a telegram advising my owner, Capt. J. A. Farquhar, at Halifax, of the seizure of the ship and particulars.

50 36th. She was steering her course towards Kingston. The course was not altered after we saw the ship until we stopped our engines. It was always directed to the course destined by the ship's papers. The course I steered followed out my instructions from Robertson & Co. The courses were in accordance with his instructions—that is, as far as my judgment goes. I wish to say that the course was not always directed towards the nearest route to Kingston. When she was seized I never measured the distance to Kingston. I don't know what it was. The course was not altered towards any other port, but the course was frequently altered. I frequently had to alter the ship's course. I couldn't tell how often. It was altered for the safe navigation of the vessel at times, and at other times to bring her nearer the port of destination. I don't know how to put that. I never altered it towards any other port—that is, with the intention of going to any other port at any other time. Her course was altered. I couldn't tell how many times. In the first place, when I left Halifax I steered out nearly a south course true, to get clear of the fog. Then I kept the ship on the course for the Crooked Island passage, intending to go down through there, but at times the sails wouldn't draw when the ship was on her course, and I kept her off at times for the sails to draw, but I didn't alter the course for anything else until we got through the Crooked Island passage. Then I altered her course for the old Bahama channel, to carry out the instructions I got from Robertson & Co., which the charterers told me to carry out. I did not alter the course for any other port at any time. I mean by that with the intention of entering any other port. The reason I altered my course when I got through the Crooked Island passage, of course I had to alter the course going through for the safe navigation of

the ship. When I got through the passage then I altered my
51 course for the old Bahama channel, endeavoring to carry out the instructions. The instructions I had were to deliver my cargo in Sagua or Caibaren, if the ports were not blockaded. The instructions I was to carry out was I was to deliver the cargo to Sagua or Caibaren. I naturally wanted to pass those ports according to my instructions; that is the reason I altered the course, as far as I understand the question. I altered it once for that reason. I did not direct my course towards those ports at any time, but I directed my course through the old Bahama channel to pass those ports, but at no time was the ship's course directed to either of the said ports. I could not tell you how often I altered the course unless I had the log book. I had to alter going through the Bahama channel to avoid certain dangers connected with the navigation of the ship. I proceeded along the coast of Cuba after I got out of the Bahama channel westward.

37th. I don't know. I don't know the time, place, or for what consideration. I don't know anything about it. I don't know and have no reason to believe that they concealed the real property. So far as I know, she belonged to the persons asserted to be the owners.

38th. There are no guns mounted on board the ship; there are two rifles. I don't know just how much ammunition, but some. She has been employed in the sealing business. There might have been a revolver or two among the crew; I have one myself, and the officers of the crew might have one or two. There were no parts of warlike arms or balls, shells, rockets, etc., or anything intended or known to be intended for military equipment. There were no belts, balls, moulds, saltpetre, nitre, camp equipages, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores. Nothing was thrown overboard nor concealed that I know of.

52 39th. The true destination, as I believe, is Kingston, Jamaica—that is, following out the line of my instructions, the way things had turned out when I got down there, I believe the true destination was Kingston, Jamaica.

40th. The vessel did not on the voyage on which she was captured or on any other voyage sail under the convoy of any armed ship or vessel. I had no instructions to make any resistance in any way, and I had no instructions to conceal any papers or anything like that. I had instructions from my owners. I was to follow out the instructions given by Musgrave & Co. as far as they agreed with the terms of the charter-party. I was to receive a copy of the charty-party before the ship sailed. I was on no account to enter a blockaded port or to make any attempt to enter. I was also told to be very careful and not get the ship in trouble; that was about the instructions, as I reme-ber. From Musgrave & Co. the instructions were to follow out the instructions of Robertson & Co., the shippers, where such instructions were not at variance with the terms of the charter-party. Robertson & Co.'- instructions were: He intimated first he had chartered the ship, and said after the ship was loaded I would clear the ship for Kingston and Vera

Cruz; that I would proceed as fast as I could to the north side of Cuba, and there deliver my cargo to the order of the shippers. If those ports were blockaded when I got down there, I was not to attempt to enter, but to proceed to Kingston and cable him for instructions; that is as near as I remember. I am not in possession of such instructions; they are not in writing. They were sent to the other captain, and the other captain showed them to me—the late captain who was in the ship. He was in the ship when she was chartered. I joined her just recently. He was master when this document came from Robertson & Co. They are not in my possession.

53 41st. Since I have been in the ship there has been no attempt made to enter any blockaded port whatever. As I said before, I understood the ship sailed for Guantanamo before it was blockaded; just before she got there it was blockaded; when they arrived they found the port was blockaded and they were obliged to clear out. She entered the harbor of Guantanamo, but not the port. I was not on her at the time, referring to this present voyage. I was warned not to go any further inshore by the boarding officer of the Tecumseh, at 6 o'clock, to the eastward of Havana. The boarding officer warned me not to go nearer the land, and after he left the ship I hauled the ship off shore one point and kept her that way until 8 o'clock; then at 8 I kept the ship on her course again, which was not altered until the time of her seizure. The officer told me if I went any nearer inshore I might get a shell in me.

42nd. The vessel had no letters of marque or license or commission to cruise against the person or property of the citizens of the United States.

43rd. She never acted in company or concert with any armed vessels in cruising against the property of the citizens of the United States.

F. N. MALCOLM.

Sworn to and subscribed before *me* this 27 day of July, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

54 The following corrections and additions were made by the witness Captain Frederick Newton Malcolm upon reading over his testimony in the presence of the commissioners:

To the third interrogatory, "For what reason or on what pretence was the seizure made?" Captain McKensey said the ship was out of her course for either Vera Cruz or Kingston. I protested against the seizure, saying, so far as I knew, I had not violated the blockade law. He then asked some one on board, I don't know who he was, what they had on board the Mayflower about the Newfoundland. A

letter was brought to him and after he read — he told me he had information given by or through the United States consul at Halifax to the effect that the Newfoundland left Halifax with the intention of running the blockade to Cuba or Havana, I don't know for certain which, and for that reason he would have to send me in.

To the fifth interrogatory, "About the owners of the ship," I would like to add that I have always understood that Captain James A. Farquhar was the managing owner; I can't swear to it; I always understood he was; as far as I know, Captain Farquhar does most of the business in connection with the ship. He engaged me as master and also gave me instructions.

To the sixteenth interrogatory. "In Robertson & Co. instructions to me he said that either of the ports mentioned in his letter a pilot would be on the lookout for us. Also he expected lighters would be ready to take my cargo, that I was to hurry the discharging, working day and night, if possible. After discharging to proceed to Halifax and to report to the charterers or shippers, I am not positive which, and await instructions." The words "I was to ascertain as early as I could if those ports were blockaded," I don't
55 think on consideration that that was in the letter. I think that was in the letter of instruction from the owners.

To the seventeenth interrogatory. I have said here that those bills of lading were true bills of lading. I mean as far as the quantity and description of the cargo is concerned. As to the ports of destination, I cannot say whether they are true or not.

To the eighteenth interrogatory. I said I had no other documents on the ship relating to the ship or cargo, relating to this voyage, except those I have given. Before sailing I asked Musgrave and Company to give me a list of the blockaded ports of the island of Cuba. This is what he gave me. He told me the lines drawn on this map represented the port which the Canadian government had notice were blockaded, so I think I had better submit this map to the court. Map annexed, Exhibit "A." He also told me the ports of Guantanamo and Santiago were blockaded. He marked them with dots on the map, but the Canadian government had no official notice of such blockading up to the time of my sailing from Halifax. I would say that I have delivered this morning to the prize commissioners the certificate of inspection of the ship, which I didn't know was required. In number eighteen I further said here I never saw such paper in any one's possession; now I would state that Robertson & Company's letter of instruction I last saw in Captain Farquhar's possession.

To the twenty-fourth interrogatory. I have not said all I could to that question. I will add that I saw in the newspapers in Bermuda that the Newfoundland had attempted to enter Guantanamo while it was blockaded, a shot was fired across her bow, and no attention was paid to it by those on board the Newfoundland. Another shot was then fired, which went through the pilot-house, killing
56 the captain. That is as near as I remember. I saw in the newspaper about the previous voyage.

To the twenty-eighth interrogatory. I would also like to add that

I would have delivered the cargo to the person producing the original bills of lading.

To the thirtieth interrogatory. I would say there was no transshipping so far as I know.

To the thirty-fifth interrogatory. About the communication, I wrote a letter to my wife, which was strictly private. It passed through the marshal's hands. I mentioned the fact that the ship was seized, but no information about it, telling her not to worry.

To the thirty-sixth interrogatory. In regard to that question I would say that I saw a ship inshore, which I have every reason to believe was the Mayflower. It was before dark. The ship was not heading for us, but, if it was the Mayflower, then I altered the course after I saw her; I altered the course at eight o'clock one point. The reason I altered the course was that I had previously been steering a point off my course, and my reasons for that was I had been warned by the boarding officer of the Tecumseh not to come any nearer land. At eight o'clock I kept the ship on the course again. I am not sure that that vessel was the Mayflower, and this would not be necessary, but I added it in case it was.

To the fourtieth interrogatory. In reference to instructions from my owners—my instructions were from Captain Farquhar, who was the one I got the instructions from—was that I was to report to George E. Boak & Co., Halifax, after the ship was loaded, and ascertain from them if they had received the policy of insurance,
57 war risk. I was not to sail until they had such policy and were satisfied with it. I was also to receive a copy of the blockade law. In case of getting into trouble I was to cable to George E. Boak & Co. for instructions. These were verbal instructions I received, and again these instructions from Roberston & Co. Those instructions were in writing, but they were addressed to the late master of the ship. They were not sent to me at all. I have said here they were not in writing, and I would like also to make the same correction that I made previously in regard to Roberston and Company's instructions.

F. N. MALCOLM.

Sworn to and subscribed before us this 27th day of July, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

[Endorsed:] Evidence of Capt. F. N. Malcolm, master.

58 *Testimony of Albert Salkus in Preparatorio.*

UNITED STATES OF AMERICA,
District of South Carolina.

THE UNITED STATES
vs.
THE NEWFOUNDLAND.

Deposition of Albert Salkus, a witness produced, sworn, and examined *in preparatorio* on the 28 day of July, 1898, at the city of Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, the said witness having been produced for the purpose of such examination by the U. S. attorney in behalf of the captors of a certain ship or vessel called the Newfoundland and her cargo.

To the 1st interrogatory deponent says: I was born in Germany; Memel, North Germany. I now live at Halifax, N. S., and I have lived there since 1871. I am a subject of Novia Scotia, and I owe allegiance to Great Britain. I am not a citizen of America. I am a married man, and my wife and family reside in Halifax—77 Cornwallis street.

2nd. Yes. I was on board at the capture of the vessel; I was not on deck.

3rd. The ship was stopped about 10 o'clock at night on the 19th July, the compass lights bearing southeast by south half south about 21 miles, and she was carried into Charleston. She had no letters or commissions to make prizes, as far as I know. I have no idea on what pretence the seizure was made.

4th. The English flag. She had no other colors on board.

5th. Not the least resistance was made at the time of cap-
59 ture. One gun was fired by the American ship. The capture was made by the Mayflower, and there was no other ship in sight at the time of the capture. The vessel captured was a merchantman. I could not tell the owner. The only one I know is the managing man, Captain Farquhar. The capturing vessel was a U. S. man of war.

6th. I don't know what commission the vessel had, nor from whom. The capture was made by the Mayflower. The vessel has not been condemned, so far as I know.

7th. The vessel taken was the Newfoundland. Her captain was Capt. Malcoom; I don't know his first name; Capt. Farquhar appointed him to the command of the vessel at Halifax, N. S., on the 1st July. I have known the vessel since 1875, and I have known the present captain 4 years; Captain Farquhar appointed him to the command of the vessel on the 1st July, 1898, at Halifax, N. S., and his home is at Halifax; I don't know how long he has lived there; I don't know where he was born, or what country or State he is a subject or citizen of.

8th. 557—somewhere about that; that is her registered tonnage; the gross tonnage is 900 and some odd. 22 composed the ship's company, and all were on board; most of them are English; one French and the rest English; they all came aboard at Halifax the same time, and the master shipped and hired them in Halifax.

9th. Yes, as chief mate. I had no interest in the vessel except my monthly wages. I got $45, and, so far as I know, the rest of the men had only the same interest.

10th. I have known the vessel since 1875; I first saw her in Halifax; at that time she carried one gun; she was in the mail
60 service then, and she had to carry a gun. 22 men were aboard at the time of the capture. There was no engagement. She was of Canadian build; built in Quebec, I believe; she was called the Newfoundland, and has been called so from the time she was built; she never had any other name.

11th. She was bound to Vera Cruz or Kingston; that is all I know. The voyage began at Halifax and it was to have ended at Halifax. The principal part of the cargo was flour and some canned meats, 200 bbls. of pork and 16 tins of mineral water and some corn and wheat, 200 bags of one and 150 bags of the other, and the same was on board when she was seized. It was put aboard of her in 1898, 1st July, and finished on the 8th July. So far as I know, she had no contraband goods of war or what was prohibited by law.

12th. Not to my knowledge; she had the ordinary ship's register. We left Halifax for Vera Cruz and Kingston; the voyage began at Halifax and was to have ended at Halifax. The cargo carried was flour and provisions, as I have mentioned before, and none have been delivered so far as I know. We left Halifax on the 9th July, 1898.

13th. Flour and provisions, as I have stated before; they were put on in July, 1898. I have already stated the different articles: flour, 5,940 bags and 1,050 barrels of flour, 200 barrels of pork, and 150 sacks of wheat or corn, I am not certain which, and 200 sacks of either wheat or corn, 16 tins of mineral water, and there was, so far as I know, 2 car-loads of canned meats.

14th. I don't know the owners, so I can't tell. I don't know who they are or what they are or where they reside or have resided nor of what country or State they are subjects.

61 15th. I don't know of any bill of sale nor in whose presence such was made. I know of no engagements entered into nor of any bill of sale, and I never saw such bill of sale.

16th. She was loaded in Halifax July, 1898. I don't know the names of the owners, laders, or consignees. I don't know anything about them. The goods were to be delivered at Vera Cruz or Kingston, but I could not tell for whose real account, risk, or benefit. I don't know whether any of the laders or consignees had any interest in the goods. It was apparently good wheat flour, and the canned goods were in seemingly good condition. I supposed that the goods would belong to the persons mentioned in the bills of lading.

17th. I don't know. I did not sign nor have I seen any bills of

lading, and I don't know whether they were false or colorable. I don't know, as I never saw any of the bills of lading.

18th. I don't know anything about any papers aboard the vessel. I have never been in possession of any such papers. If any were in the ship the captain had them. I never saw or knew anything about them.

19th. I did not look at the chart at the time, but I can give the bearing of the lights: Havana light, southeast by south half south 21 miles. That is the position on July 19th, 1898, at 10.10 p. m., near Havana, and we ought to be at least 13 or 14 miles off shore. It was not a port of the United States. I don't know anything about a charter-party. It is not in my possession, and I don't know anything about it.

20th. I don't know anything about the papers on board the vessel. As I have said, to my knowledge no papers were
62 burned or destroyed or any effort made to conceal them.

21st. Yes; we knew Cuba—I mean Spain—was in war with the United States, and I knew the naval forces of the United States held such ports in a state of blockade, and the master knew it, because we were told so by the ships that passed and boarded us. We knew that part of Cuba was blockaded before we left Halifax, and when we got off of Nue Vitas the first man-of-war of the U. S. spoke us, and they told us that the whole of the coast was blockaded, and he informed the master at the same time. I don't know when it was—between Sunday and Monday before the capture—and we heard it off Matanzas. We were spoken by a little U. S. towboat, acting as a man-of-war, and they told us the whole coast was blockaded. That was the following day, and the night before the capture we were spoken again by the towboat Tecumseh, at 6 o'clock at night, and said the whole coast was blockaded, and said, If I was in your place I wouldn't go any closer in.

22nd. We made no attempt to enter any port, and never entered any. We knew the whole coast was blockaded, but we made no attempt to enter. Notice had been given us that the whole coast was blockaded, but we made no attempt to enter any port. A notice in writing had been endorsed on the ship's papers by the visiting officer from the first ship, and he stated on our register he examined the papers. I don't know what he marked in the register, and the boarding officer from the Tecumseh he marked in the log he had examined the papers, and he told us not to go near the shore. That was at 6 o'clock at night, but we never attempted to enter any port, nor did we sail or attempt to sail from any port that was blockaded.

23rd. The register and ship's papers were examined by 3 officers and endorsed. The first officer endorsed the register, and the second boarding officer endorsed none, and the third boarding officer
63 endorsed the log. I don't know the names of the officers. The last one, I think, signed his name Nickerson, from the Tecumseh. All I know of the endorsing of the log, he was aboard the ship and warned us not to go closer in shore or to attempt to enter any of the ports.

24th. I don't know of any time she entered any port of which we had notice was blockaded or or going out of it. I never heard that this ship ever came out of a blockaded port on this or any prior voyage or entered it.

25th. No; she has never been seized as a prize and carried into a port by any one.

26th. I have not received any loss as yet; no. I have not received any indemnity or satisfaction or promise of satisfaction for any part of the damage I may have sustained from this capture and detention.

27th. I don't know if the vessel and goods are insured.

28th. I don't know anything about the cargo. I don't know whether the lader was to take the chances of the market for the sale of the goods.

29th. Thr flour came from Canada, and all the rest, so far as I know, came from Canada.

30th. The cargo was taken out of the cars at one pier at Halifax in July, 1898; from the railroad pier—Government pier.

31st. I couldn't tell you. I don't know about any papers on the vessel, nor of their nature or contents.

64 32nd. There were no papers carried away, to my knowledge. I never saw any papers.

33rd. No; the bulk has never been touched from the time of the departure of the vessel from Halifax to the time of the capture.

34th. There were no passengers on board; we had no passengers, and there were no soldiers, officers, or marines secreted on board, and there were no citizens of the United States on board, and there were no citizens of any State or Territory of the United States then in a state of war or rebellion against the United States, its Government or laws, on board.

35th. I know nothing of any papers whatsoever of any kind on the ship, and I don't know whether they were false or colorable or that there was anything to affect their credit. I know nothing of passports or sea briefs, nor from whom obtained, if obtained, nor on whose oath or affirmation, nor for how long a time they were to last, nor if a duty or fee was paid for the same, nor whether any duty or fee was to be paid for the renewal, nor whether the vessel was ever in the port where such passports and sea briefs were granted. I don't know whether any persons on board had a license for safe conduct. I don't know of any invoices, bills of lading, instruments, or papers relating to the vessel and goods, about which I am now examined, in the United States or any other country, nor how they were brought into such place or country, nor in whose possession they are, nor whether they differ from any papers on board, nor in what particulars they differ. I have not written any letters or papers concerning the vessel or cargo.

36th. We were steering our course for Vera Cruz; it was
65 not altered upon the appearance of the vessel by which she was taken; her course was steered always for Vera Cruz or Kingston, to which she was destined. We were sailing towards the ports of our destination. Yes; she was sailing directly for the port of

destination from the time we left Halifax till we were captured, and we were never sailing wide of that port in any way. She was distant from Vera Cruz about 600 miles. Her course was not altered for any port except Vera Cruz; that was the only course she steered. I never heard of any other port than Vera Cruz from the time I left Halifax till we were captured.

37th. She has been sold twice. She was sold in 1888 first. She belonged to the Allen Line Co., and they sold her to the Young Allens in Montreal; they had no more use for the vessel, and she was sold and made a steam collier; she only sold for £1,000; she was a white elephant on their hands, and then she was sold in 1891 again by the Young Allens to persons for whom Captain Farquhar was managing agent at Halifax. I don't know what the consideration was then. I guess the sum has been paid, but I don't know anything about the payment or what credit was given, nor where the parties lived, except Captain Farquhar, who lives in Halifax. That sale was truly made, as far as I know, and were not for the purpose of concealing the real property. I believe if the vessel is restored she will belong to the same owners and no others.

38th. At the present time, none. There is a rifle on board and a few cartridges belonging to the rifle. There are not on board any guns, weapons, warlike arms or armament of any name or description, nor any parts of warlike arms not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion, or any other thing known to be intended for military equipment. There were no belts, ball-moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any part of them, or any sort of warlike or naval stores, and no warlike or naval stores or things were thrown overboard to prevent suspicion at the time of capture, nor were they concealed under the name of merchandise or any other colorable appellation in the ship's papers; there were no such goods on board. There is a- international law which forbids the exportation of such warlike articles above described by any private person without license, but no such warlike or naval stores were on board.

66

39th. I know and believe the destination was for Vera Cruz and Kingston; that is all I know. I don't know of any other port whatever to which the ship was destined.

40th. She never sailed under any convoy or ships of war, to my knowledge, on this or any previous trip, and I know of no reason for her sailing under any convoy, nor anything about any convoy or to what country they belonged, and as we never sailed under any convoy, we never received any instructions on the subject. I have had no instructions from anybody to resist or avoid capture, nor have we refused to deliver or destroyed or concealed the vessel's papers or any other papers that might be put on board the ship; therefore I can't state the tenor of such instructions. I am not in possession of such instructions or copies thereof, and therefore I can't leave them with the commissioners to be annexed to this deposition.

41st. No; we never sailed into any port under blockade, to my knowledge, at any time. On the last voyage we sailed in
67 Guantanamo, but we were told the place was blockaded, and we left. It was taken the morning before by the United States, we were told by the visiting officers of the U. S. men-of-war; that was last month, in June, on the previous voyage. We heard of the Guantanamo blockade the day we arrived, but we were not warned and had seen nobody before such time to tell us not to enter such port. I could not say about the conversation; the officer only told us the place was taken the morning before and we could not proceed up the bay. Captain Farquhar, then master of the ship, then said he had a cargo of sugar, and they said he could not get it out under the Spanish flag, but we might get it out under the American; that was at Guantanamo. We went out then and proceeded to Porto Rico.

42nd. The vessel did not carry a commission to cruise against the persons or property of the United States and make prizes thereof, and they were not licensed or given any directions therefor in writing or otherwise. I don't know the contents thereof, as I have no knowledge whatsoever upon the subject.

43rd. The vessel did not at any time sail or act in concert with any armed vessels in cru-sing against or seizing as prizes any persons, vessels, or property of the citizens of the United States.

A. SALKUS.

Sworn to before us and subscribed before us this 29 day of July, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

68 *Testimony of Levi Bursey in Preparatorio.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

THE UNITED STATES }
vs.
THE NEWFOUNDLAND. }

Deposition of Levi Bursey, a witness produced, sworn, and examined *in preparatorio* on the 28th day of July, 1898, at the city of Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, said witness having been produced for the purpose of such examination by the U. S. attorney in behalf of the captors of a certain ship or vessel called the Newfoundland and her cargo.

Interrogatory 1st. Newfoundland, and I am a sailor and I could not tell where I lived. Newfoundland is my home when I am at

home. I am a subject or citizen of Newfoundland and I owe allegiance to Great Britain, I suppose. I don't understand that. I am not a citizen of the United States and I am not a married man.

2nd. I was on the bridge when the ship was captured.

3rd. I don't know what date. I know it was 10 o'clock at night, 4 bells. I think it was this month. I don't know myself. I heard them say we were 21 miles. I don't know where we were. I only got the course from the captain. I don't know what port I was off—the log will give that—and I forget the name of this place where the ship has been carried. I don't know whether the ship had any letters or commission to make prizes, nor from whom. I
69 don't know why they captured the vessel or the first thing about it.

4th. English; we had no other colors on board.

5th. No resistance was made; only one gun was fired from the Mayflower. I sighted no other ships. Our vessel was a merchantman. I don't know to whom she belonged. I don't know if the capturing vessel was a ship of war; they told me she was the Mayflower, of the United States.

6th. I don't know whether the capturing vessel had any commission to act in the seizure or capture of the vessel, nor from whom, but the capture, I was told, was made by the Mayflower, a United States ship. I don't know whether our ship has been condemned.

7th. The Newfoundland; I don't know any more than you what the captain's name is; it sounds like Malcolm. I didn't know him until he came on the ship. I am a stranger and so is he. I don't know who appointed him to the vessel or where. I never knew the man at all. I have known the vessel 3 years. He took possession of her in Halifax, but I don't know who delivered the ship to him. I don't know the home of the master, nor how long he has lived there, nor anything about him.

8th. I don't know the tonnage of the vessel, and I don't know that I could tell you the number of the vessel's company. I couldn't even say about how many. I don't know what countrymen they are, and I don't know what time they came on board. I know I came on board a few hours before the ship sailed; none have come on board since the ship sailed. I don't know who shipped them. I engaged with Captain Farquhar; he engaged me.

9th. Yes; as second mate. I had no interest in the ship and I don't know whether any other of the members of the ship had any or not.

70 10th. About 3 years. I saw her in Halifax about 3 years ago; she carried no guns, to my knowledge. The same crowd was on board before she was captured as now; there was no engagement entered into. I heard she was built *built* in Quebec, or somewhere about there. Her name was the Newfoundland. I don't know how long she has been so called. I don't know of any other name.

11th. I don't know. I shipped for the West Indies; that is all I know. Our voyage began at Halifax and was to have ended at Halifax. I don't know anything about her cargo. I don't know

what she had on board when taken and seized; her cargo was put on board during the present year. I don't know what month. I don't know whether she had on board any goods contraband of war or otherwise prohibited by law.

12th. I don't know; I did not see any of the papers nor know from whom they came. I shipped for the West Indies. I don't know where she was bound. I shipped from Halifax to go back to Halifax and be paid off. She went into no ports from the time of her sailing. I told you I did not know anything about the cargo, and we have not delivered any cargo at any port; she sailed from Halifax.

13th. I don't know what kind of goods the vessel had on board when she sailed and when she was taken; it was in this year the capture was made. I don't know the month. I know nothing about the cargo.

14th. I don't know who were the owners of the ves-els and goods, nor do I know how they were the owners, nor of what country they are, nor where they reside or have resided previously.

15th. I don't know anything about the bills of sale, where it was made, nor by whom, nor of any engagement entered into
71 concerning the purchase, further than what appears on the bill of sale, nor do I know what has become of it.

16th. I don't know when the cargo was put on her; it was this year. I don't know the names of the laders, owners, or consignees, nor what countrymen they are, nor anything about them. I don't know where the goods were to be delivered, nor for whose real account, risk, or benefit, and I don't know whether the said laders and consignees have any interest in the goods. I don't know anything about the quantity or qualtity of the goods, nor if they will belong to the same persons if they are restored and unladened at the destined port.

17th. I don't know how many bills of lading were signed. I don't know whether any bills of lading were false or colorable or if they were signed different in any respect from those which were on board the vessel, nor what was their contents, nor what has become of them.

18th. I have none in my possession. I don't know whether they were on board the vessel at the time of capture. I don't know of any paper to show my interest or of anybody's else in the vessel or goods. I am not in possession of any such papers. I don't know anything about such papers. I don't know in whose possession they are, and I never saw them.

19th. I couldn't state the degrees of latitude and longitude. I know she was captured in the present year, about 10 o'clock at night, in this month. I don't know what port we were near. We reckoned we were 21 miles from shore, but I don't know. I don't know whether it was a port or territory of the United States. I don't know whether any charter-party was signed or executed or by whom or when, and such is not in my possession, and I
72 don't know its contents.

20th. I don't know what papers or writings were on board

the vessel, and I don't know whether any were burnt, torn, thrown overboard, destroyed, cancelled, or attempted to be concealed.

21st. I did not know and I don't know whether the master knew at the time and place of her capture whether such place or port was in a state of war with the United States. I did not know that the naval forces of the United States held such a place in a state of blockade, and I don't know whether the master knew.

22nd. I don't know whether such port was under blockade at the time said vessel entered or attempted to enter the same; the vessel made no attempt to enter and did not enter any port. I don't know whether any notice or warning of such blockade had been given to or received by the owner, master, or commandant of said vessel, but she never attempted to enter any port. I don't know whether any notice in writing had been endorsed on the register or other ship's papers or when or by whom such notice had been endorsed of the existing blockade of such port. She never entered or attempted to enter or sailed or attempted to sail from any port on said voyage.

23rd. I don't know anything about the register of the vessel. I know we were boarded by 3 officers, I think. I don't know what they did; we kept on our course. I don't know who they were or what they did while aboard. There were two small boats. I was on deck when one came—the Tecumseh. She was the last one. I heard the men say that was her name. I don't know where
73 or off what ports they boarded the ship, and I don't know what they said or did.

24th. I don't know and never heard of the ship having at any time or times after the blockade of the said port and after notice had been given attempting to enter the blockaded port or sail therefrom without success. I don't know and have not heard of any particulars on the subject.

25th. I don't know and never heard of her having been condemned as a prize.

26th. I have suffered no loss by the taking or the seizure of the vessel, and I have never received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which I may have sustained or may sustain by this capture or detention.

27th. I don't know whether the vessel or goods are insured.

28th. I don't know whether if we arrived at our destined port our cargo or any part thereof would have immediately become the property of the consignees or whether the lader was to take the chance of the market for *for* the sale of the goods.

29th. I know nothing whatever about the cargo. I never shipped until after the cargo was put on board.

30th. I saw them taking it from the wharf at Halifax. I don't know what wharf.

31st. I don't know whether there is in any country besides the United States or on board any vessel other than the one I am
74 now examined about any bills of *any bills of* lading, invoices, letters, instruments, papers, or documents relative to the said vessel or cargo, or what their nature is or their contents.

32nd. I don't know whether any papers were delivered out of

said vessel or carried away, or when or by whom or in whose custody or power they now are.

33d. I know the bulk has not been broken during the voyage or since the capture of the vessel.

34th. There were no passengers as I am aware of, and none were hidden away at the time of capture; there was no one on board but the ship's crew. I don't know whether any citizen of the United States was on board or secreted or confined at the time of the capture. To my knowledge, none such were secreted or confined at the time of capture. There was no citizen of any State or Territory of the United States on board then in a state or war or rebellion against the United States, its Government or laws.

35th. I don't know anything about passports, sea briefs, charter-parties, bills of sale, invoices, and papers found on board, nor whether they were true or false, and I know of no matter or circumstance to affect their credit, nor by whom any passports were obtained, nor from whom, nor whether they were obtained for this vessel only and upon the oath and affirmation of the persons therein described, nor whether they were delivered to or on behalf of the persons who appear to have been sworn or affirmed without their having ever in fact made such oath or affirmation, nor for how long a time they were to last, nor whether any duty or fee was payable for the same, nor whether there is any duty or fee to
75 be paid on the renewal, nor whether any passports have been renewed or how often, nor whether the vessel was in the country where these passports were granted, nor whether any person on board had any passport, letter, or license of safe conduct, nor whether there are in the United States or places or country besides the United States any bills of lading, invoices, instruments, or papers relative to the goods or vessel. I have not written or signed any letters or papers concerning the vessel or cargo.

36th. I don't know what port or place she was steering for. I heard we were going to Kingston or Vera Cruz; that is all I know about it. From the time I went on the bridge the course was not altered; before that I don't know; I was not on the bridge. As far as I know, her course was always directed towards Vera Cruz; that was the course we were going for, as far as I know. I don't know whether she was sailing before or at the time of her capture wide of her course to which she was destined by the ship's papers. I don't know how far she was from Vera Cruz or Kingston. You know a ship steering a course, she can't always steer one course; she was not altered when I was there. I only had the course given to me by the captain or mate. I don't know to what other port or place she altered her course or for what reason.

37th. I don't know anything about the ship whatever, or whether she has been sold or transferred or how often or whether the consideration has been paid or satisfied or by whom or where they live. I know nothing as to any sale or transfer, and I have no belief on the subject. As far as I know, if the vessel was restored, she would belong to the persons now said to be the owners.

76 38th. No guns were mounted—none that I know anything

of—and, so far as I know, there were no guns or ammunition, weapons, warlike arms or armament, nor any parts of warlike arms not put together or finished, or any fixed or unfixed, or any balls, shells, rockets, hand grenades, flints, percussion caps, or any other thing known to be intended for military equipment; nor were there any belts, ball mouids, saltpetre, nitre, camp equipage, military tolls, uniforms, soldiers' clothing or accoutrements, or any sort of warlike or naval stores; nor were such warlike or naval stores or things thrown overboard to prevent suspicion at the time of the capture, nor were any such things concealed under the name of merchandise or any other colorable appellation in the ship's papers, according to my knowledge. None of the above-named articles were for the sole use of any fort or garrison to which such vessel was destined. I don't know of any ordinance, placard, or law existing in such country or State forbidding the exportation of the same by private persons without license, and none such were on board by public authority.

39th. As far as I know, she was bound for Vera Cruz or Kingston.

40th. The vessel did not, on the voyage in which she was captured or any former voyage, to my knowledge, sail under the convoy of any armed ships, and I had no instructions or directions on any voyage respecting the sailing or keeping in company with such armed or convoying ship. I had no instructions to avoid escape or capture, nor for destroying or concealing or refusing to give up the vessel's documents, papers, or any other papers that might be or were put on said vessel, and I am in possession of no such instructions or copies thereof and don't know the tenor of them.

77 41st. Not as I am aware of has the vessel on this voyage or at any time or times attempted to enter any port under blockade by the arms or forces of any belligerent power. I was warned about the time the 3 ships came up. We were warned then and we kept clear. I heard no conversation at the time. I don't know what course we were steering at that time. I was not on the bridge at the time we were warned. It was not my watch.

42nd. I don't know whether the vessel I am examined about did on her last voyage prior to the seizure carry a commission or license as a privateer or letter of marque or reprisal or authority from any persons to cruise against the persons or property of the citizens of the United States and to make prizes thereof, nor by whom such authority was given, nor whether it was in writing, nor if it remained with the vessel up to the time of her capture or was destroyed or concealed previous thereto, nor when or by whom, and I don't know the contents thereof. In fact, I have no knowledge whatever on the subject.

43rd. I don't know whether the vessel had at any time sailed or acted in company or concert with any armed vessels in cruising against, pursuing, or seizing as prizes any persons, vessels, or property of the citizens of the United States, and I never heard of any such thing.

LEVI BURSEY.

Sworn to before *me* this 29 day of July, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

78 *Testimony of Horatius Shawner in Preparatorio.*

UNITED STATES OF AMERICA,
District of South Carolina.

THE UNITED STATES
vs.
THE NEWFOUNDLAND.

Deposition of Horatius Shawner, a witness produced, sworn, and examined *in preparatorio* on the 30th day of July, 1898, at Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, said witness having been produced for the purpose of such examination by the United States in behalf of the captors of a certain ship or vessel called the Newfoundland and her cargo.

To the 1st interrogatory deponent says: Newfoundland, the lower end of Newfoundland; that is my home now, and I have lived there all my days. I owe allegiance to Great Britain. I am not a citizen of the United States. I am not a married man.

2nd. I was to the wheel.

3rd. I can't recollect; it was July, 1898; it was off Havana, I think; we were brought into the port of Charleston, S. C. I know nothing of any commission nor from whom it was. I don't know anything about it in any way.

4th. The English colors. She had no other colors that I know of.

5th. No resistance was made. One gun was fired by the Mayflower. We were told it was the Mayflower. There were
79 no other ships in sight. Our vessel was a merchantman. I don't know to whom she belonged. I don't know what the capturing vessel was. The crew told us she was a torpedo-boat destroyer of the United States.

6th. I don't know if the capturing vessel had any commission to act in the seizure or capture of our vessel, nor from whom. The capture was made by the Mayflower, so far as I could learn. I don't know whether our ship was condemned or not.

7th. The Newfoundland. Captain Malcolm is the master. I don't know his first name nor who appointed him to the command of the vessel nor where he was appointed. I have heard talk of this vessel for 3 years. I came to Halifax in April from Newfoundland, and I joined this vessel on the 4th July, 1898. I never saw the captain

until he went as captain of the Newfoundland. The first time I saw the captain was when I signed, the 4th July, at Halifax. I don't know when he took possession or who delivered the ship to him. I don't know where the captain lives or anything about him nor what country he is a citizen of.

8th. I don't know the tonnage of the ship. We had on board 6 sailors, 6 firemen, 3 engineers, the captain, first and second mate-, steward and cook, and coal-heaver and saloon boy. All were aboard at the time of the capture. I don't know where all belonged to. Quite a lot were Newfoundlanders—not all, though. The sailors all came aboard at Halifax the same time. I know nothing about the rest of the people. They were different from us. The sailors came aboard the 4th July. I forget the shipping master's name. We signed in the saloon of the ship, at Halifax, on the 4th July.

80 9th. Yes; as sailor before the mast I had no interest in the vessel or the goods ladened on her, and, so far as I know, none of the crew had any.

10th. I have heard talk of the ship for 3 years. I never saw the ship until some time in April, at Halifax, 1898. She did not carry any guns, as far as I know. I have already stated how many men were aboard. I don't know the exact number. There was no engagement at the time of capture. I don't know where the ship was built. She was called the Newfoundland. I don't know whether she was ever called by any other name.

11th. The West Indies; some West Indian port. I don't know the port. The voyage began at Halifax. I don't know where it was to have ended. I just signed to go the trip on the ship. I signed on the ship at Halifax, to get paid when I got back again. I don't know what sort of cargo she carried. I don't know anything about the cargo at all. The cargo was put on board in Halifax. I think it commenced to be put in the latter part of June and the first of July. I don't know anything about the cargo, whether contraband of war or what kind of goods.

12th. I don't know anything about the ship's papers. She was in no port; never sailed to any port. This voyage began at Halifax, and I don't know where it was to end. She had delivered no cargo up to the time of the capture. I don't know anything about the cargo. She sailed from Halifax; that is the only port.

13th. I don't know what lading she had on board at the time of her first setting forth and when taken. Some of the cargo, I think, was put on in June and the rest in July. I don't know what

81 her cargo was or the different species.

14th. I don't know who were the owners of the vessel and goods at the time of the capture, nor do I know what nation or country they are by birth, nor how long they have resided there or where they previously resided, nor what country they are citizens of.

15th. I don't know anything about the bills of sale, where given, or in whose presence it was made, if any. I don't know whether any engagements were entered into concerning the purchase further

than appears on the bill of sale. I never saw it and I don't know what has become of it *it*.

16th. Some, I think, in the letter part of June and some in July. I don't know the names of the owners, laders, or consignees nor anything about them. I don't know where the goods were to be delivered or for whose real account or benefit. I don't kno- anything about the interest of the owner of the goods. I don't know the quantity or quality or appearance of said goods. I don't know anything about the delivery of said goods, whether, if restored to the destined ports, they would belong to the same persons and none other.

17th. I don't know how many bills of lading were signed nor whether any were false or colorable or whether any were signed different in any respect from those on board the vessel at the time she was taken, and I don't know the contents of such bills of lading, if any, or what has become of them.

82 18th. I have not in my possession and don't know whether there were on board any bills of lading, invoices, letters, or other writings to show my own interest or the interest of anybody else in the vessel or cargo, and I know nothing of any papers referred to in this question.

19th. The vessel's course was west; that is all I know. I was at the wheel at the time. I can't remember the day; it was in 1898, in July; I think off Havana. I don't know how far from shore. I don't know whether it was near any port of the United States; so far as I know, it was not. I don't know whether any charter-party was signed for this voyage, nor by whom, nor when; none such is in my possession, and I don't know its contents.

20th. I don't know what bills of lading, letters, or other writings were on board at the time she took her departure from her last clearing port, and I don't know whether any were burnt, thrown overboard, or destroyed.

21st. I know that Spain was at war with the United States. I did not know that Havana was blockaded. I knew nothing about Havana. I heard about the war before I left Halifax. If the master knew it, he never told me.

22nd. We never attempted to enter Havana. I don't know whether Havana was under a state of blockade before we were captured by the Mayflower. Yes; we had notice of such blockade by two or three tugs that boarded us, but we never entered or attempted to enter any port or to sail from any port, and, so far as I know, no endorsement was made on the register of the ship.

23rd. I can't say whether the register was shown to or examined by any officer of the U. S. Navy or revenue officer of the U. S. before the capture. She never entered any port. I don't know any-

83 thing about the endorsements by the U. S. officers.

24th. I was never in the ship before this voyage. I heard that she ran the blockade before. I don't know where she ran the blockade; all I heard she ran the blockade before. I heard that from the crew. I don't know which member of the crew. I only just heard it. I don't know what port she ran the blockade; they

didn't tell me the facts. I didn't make any inquiry. The ship was blamed for running the blockade before, and I heard it.

25th. She has never been condemned as a prize, so far as I know.

26th. No; I have not sustained any loss by the capture of the vessel, and I have not received any indemnity, satisfaction, or promise of satisfaction for any loss I have or may sustain from this capture by any one.

27th. I don't know whether the vessel or goods are insured.

28th. I don't know whether on the arrival at the destined port the cargo or any part would immediately have become the property of the consignee or whether the lader was to take the chance of the market for the sale of the goods.

29th. I don't know any particulars about the cargo.

30th. The cargo was taken from the wharf—I don't know the name—in the month of June and July, 1898.

31st. I don't know whether there are in any country besides the United States or on board of any other vessel any bills of lading, invoices, letters, instruments, papers, or documents relative
84 to the said vessel and cargo, and I don't know the contents of such papers.

32nd. As far as I know, no papers were delivered out of the vessel. I don't know anything about the papers whatsoever.

33rd. The cargo was not broken, as far as I know, not in my presence, either before or after the capture.

34th. No passengers were on the vessel and nonw were hidden away. There were no officers, soldiers, or mariners secreted that I know of, and no citizen of the United States secreted or confined at the time of the capture. There were not on board any citizen of the United States of any Territory or State then in war or rebellion against the United States, its government or laws.

35th. I don't know anything about passports, sea briefs, charter-parties, bills of sale, invoices, nor papers found on board of the vessel; in fact, I don't know anything about the papers in any way, nor do I know when or from whom or where they were obtained, nor for how long a time they were to last, nor whether any duty or fee was payable for the same, nor whether any duty or fee was to be paid for the renewal, nor whether the vessel was in the country where the passports and sea briefs were granted, if any were granted, and I don't knew whether any person on board had a passport or license of safe conduct. I don't know anything about the bills of lading or papers or in whose possession they are, or whether they differ from the papers on board the vessel, or anything about the papers. I have not written or signed any papers concerning the vessel or cargo.

85 36th. Her course was west. She was bound for some port of the West Indies. I don't know what port in particular. I know nothing of what port she was sailing for when taken. Her course was not altered upon the appearance of the vessel by which she was taken. I don't know to what port she was heading for at any time. I don't know about it, and I am not supposed to know. I don't know what distance she was from the port of destination according

to the papers. Her course was not altered while I was at the wheel. Her course had been altered since she left Halifax, I suppose. I don't know when it was altered. When the American officers came aboard the course would be altered every day. As far as I understood, it was off Havana when we were captured. I don't know what port we were off when the first American officer came aboard, or the second or the third. When they captured us I understood it was off Havana. I took the wheel at 8 o'clock at night the day of the capture, and the course was not altered while I was at the wheel.

37th. I don't know by whom or to whom the vessel has been sold or transferred or how often, nor at what time or place, nor for what consideration, nor whether the consideration has been paid or satisfied, nor whether the sum was a fair and true equivalent, nor by whom paid. I have no knowledge or information whether any sale or transfer has been truly made nor whether it was for the purpose of covering or concealing the real property. I don't know if the vessel were restored whether she would belong to the persons said to be the owners and none other.

38th. No guns were mounted on the vessel, and no arms
86 or ammunition belonging to the ship. I saw nothing of any guns, weapons, warlike arms, or armament of any description, nor parts of arms not put together or finished, or any ammunition, fixed or unfixed, or balls, shells, rockets, hand grenades, flints, percussion caps, or anything intended for military equipment. As far as I know, there were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any sort of warlike or naval stores; nor were any of these things thrown overboard to prevent suspicion at the time of capture or concealed under the name of merchandise or any other colorable appellation in the ship's papers. I know of no such material destined for any fort. I never heard of any law, ordinance, or placard existing in such country prohibiting the exportation of the same by any private party without a license. There were no warlike or naval stores on board.

39th. We believed she was going to Kingston, Jamaica. I think that was the port.

40th. She was not on this voyage, and, as far as I know, she was not on former voyages, under the convoy of a ship of war or armed vessel. I had no instructions to avoid capture from anybody and none for destroying, concealing, or refusing to give up the vessel's papers or any papers that might have been on board. I have no such instructions in my possession.

41st. This is my first voyage on the ship. It was reported that she ran the blockade before. That is all I know. I was not in the ship. It was common report; not on board the ship, but in Halifax. I was not in her. All I know is just what I heard. I
87 don't know when I heard the port was blockaded from which the ship tried to run the blockade. I can't say what vessel, but I know she was warned on this voyage not to enter any Spanish ports, as far — I understood. I recollect no conversation thereon.

I don't know what course our ship pursued after she was warned off.

42nd. I know nothing about that. So far as I know, she had no commission to cruise against the persons or property of the citizens of the United States.

43rd. I don't know that the vessel at any time sailed or acted in concert with any armed vessel or vessels in cru-sing against, pursuing, or seizing as prizes any persons, vessels, or property of the citizens of the United States.

HORATIO SHAWNER.

Sworn to before us this 30 day of July, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

88 THE UNITED STATES OF AMERICA, *District of South Carolina.*

THE UNITED STATES
vs.
THE STEAMER "NEWFOUNDLAND."

The following correction and addition was made by witness Horatius Shawner upon reading over his testimony in the presence of the commissioners:

22. I don't know whether we were warned, whether Havana was blockaded or not.

HORATIO SHAWNER.

Sworn to and subscribed before us this 30th day of August, 1898.

JOHN IRWIN,
Prize Commissioner.
EDWARD McCRADY,
Prize Commissioner.
JOS. W. BARNWELL,
Prize Commissioner.

89 *Testimony of Captain M. R. S. Mackenzie on Final Hearing.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court.

THE UNITED STATES
vs.
THE NEWFOUNDLAND.

CHARLESTON, S. C., *August* 30, 1898.

Captain M. R. S. MACKENZIE sworn.

By the U. S. ATTORNEY:

Q. What position do you occupy?

A. I am a commander in the navy; commander of the U. S. S. Mayflower.

Q. Where have you been on duty?

A. Most of the time recently on the blockade duty off Havana.

Q. Where were you in the month of July?

A. Most of the month off Havana.

Q. Did you meet the steamer Newfoundland while on that duty?

A. We found her one night.

Q. What time was that—what night?

A. It was the 19th of July.

Q. State the circumstances attending that meeting just in your own language.

A. We were on the blockade off Havana on the night of the 19th of July. I was senior officer. The blockade was pretty light. We were covering about five points of the compass on the bearing from Morro. We would steam off, having the Morro bearing
90 south-southwest, and go on until it bore southeast by south, and then back again. When we were about north by east of the Morro light, about 8.30 p. m., a faint light was reported about north by west of us. It was, I thought, a plain lantern, no lens, and the light was not shown steadily. It looked more like a light not meant to be seen, and it bore from us about north by west, about two miles off; not more than three miles. We immediately stood for the light and rung up full steam and sent down for the boilers to be at forced draught, and we got the ship going as fast as we could, and before we got there we were going at the rate of sixteen knots. We would lose this light and then we would see it, and then we would lose it entirely. We stood on about north-northwest, and finally saw it again on the port beam, and we stood for it again, and then saw it on the starboard beam, and we stood for it and lost it, and I don't think the night was dark. We saw the ship until within half a mile of it. In all this time we couldn't see anything but a faint light—no running lights—which probably after

we began the chase we ought not to see, as we were abaft the beam, but we should have seen it before we sighted the faint light, if coming from the eastward. We came up to her close to ten o'clock and fired a blank charge, and she brought to promptly. She blew the whistle as if some one had his hand on the whistle-pull and expected us, and we sent the boarding officer right over.

It is pretty hard to distinguish between what I know myself and what was reported to me, so if I mix up what is reported and what I know, stop me.

91 Q. Who was the boarding officer?

A. Lieutenant Culver, who came back in a few minutes with the master, Captain Malcolm, and the ship's papers. He told me at the time that the crew were all on the deck dressed; that the captain had his papers all ready, and that he had told him that he had not made up his mind where he was going. That statement the captain contradicted, saying he had not understood what Mr. Culver had said. I then looked over Captain Malcolm's papers and found that he had been warned of the blockade off the north coast of Cuba several times, but chiefly he had been warned by the Tecumseh, of the Havana blockade, according to Captain Malcolm, at six o'clock of the same evening. Captain Malcolm told me he had been steaming at the rate of 8 knots and, as I remember, west by north. I knew pretty well where the Tecumseh ought to have been, and I could not account in my own mind for all the time between the boarding by the Tecumseh and the boarding by us. The Newfoundland ought to have made a longer run, unless she had been loitering outside the blockade for a signal from shore for a chance to run in.

I looked over his papers. The thing that struck me as most important was that he had two clearances—one for Kingston and one for Vera Cruz. I know it is not the practice of any American custom-house to give two clearances. If the ship wants to go to two ports, they give one clearance. From Halifax to Kingston or Halifax to Vera Cruz, via Kingston, they give only one clearance, not for alternative ports, as in this case. That was suspicious.

92 Then her cargo was suspicious, and we had been informed by the navy department at Halifax and reports by hearsay that she had come from Newfoundland and was going to run the blockade. We knew her general business was that of a sealer. She was not properly in the West Indian trade, and we believed, and I hadn't the slightest doubt until Captain Malcolm told me it was not so, that she was running without lights. She has got an hour and a half to account for between the Tecumseh's boarding her and our boarding her. I thought Captain Malcolm seemed to be perfectly straightforward, but rather contradictory, and I hadn't any doubt in my own mind that he was going to run into Havana that night, but if he gets off I will be very glad.

Q. Do you remember where he said he was making for?

A. Vera Cruz. If he was going there, he would have to go through Florida, and if for Kingston the Crooked Island channel was all right. He gave me a plausible explanation. As I understood him,

he wanted to go to Kingston and Vera Cruz. He was to go down through the Crooked Island passage. When he got through there, if he had coal enough to go to Vera Cruz and then reach Kingston, he was to go to Vera Cruz; if not enough coal, to go to Kingston in order to take on coal. It is plausible, but an expensive trip in the way of coal.

Q. The statement that he was going to Vera Cruz was positive on his part?

A. I don't think any of his statements were very positive. He told me when he came on board he was going to Vera Cruz; to the boarding officer he didn't say that.

93 Q. Did you make or cause any chart to be made of the position of your vessel and the position of the Newfoundland?

A. The navigating officer, Mr. Culver, made a tracing the next morning from our first position when we sighted the Newfoundland and the last position.

Q. That was made under your direction?

A. He made it from the log—from the run of the ship. He is the person charged with that work on the ship. Of course, when changing courses pretty frequently and running at various speeds, you understand, things can't be down to one-sixteenth of a mile. The thing is very close, but the first position and the final position are quite accurate.

Q. The first and final positions, they are correct?

A. Yes; very nearly, judging from the position of the light, and the Morro was lighted that night. The principal point that governed me was from half past five, when boarded by the Tecumseh; they had it at six o'clock. Probably it was a difference of the times of the two vessels. From half past five till we saw her, at half past eight, she ought to have run 24 miles. Now, the Tecumseh gives her position in the official report as 3 miles. On that tracing you will see a large circle, which covers where the Tecumseh boarded her. If you take the farthest position on that circle to her position at 8.30, the greatest distance is about 12 miles; that is run in three hours.

Q. This difference in time—half hour between your time and her time?

94 A. Between the Tecumseh's time and her time. Her position at 8.30 by the log and our position agreed almost exactly. She gives it north of Morro, and we give it about north half west, a very slight difference; but there is twelve miles gone; that is an hour and a half.

Q. According to this, she made in three hours but 12 miles?

A. Couldn't have made more if she was at the farthest point, by the Tecumseh's report; if at the nearest point, only five or six miles.

Q. Were you near enough, or was she near enough, to have seen any signals from the shore, Morro?

A. Yes; all the Morro lights and the search-lights. They had some signal lights we were never clever enough to make anything of. The Morro lights could be seen where we boarded her.

Q. A vessel lying off there and intending to run the blockade—do you know anything about the condition of Havana? What is the extent and condition of the harbor, whether it is safe to run in without being signalled?

A. I presume, I don't know, that all the mines at Havana were all observation mines, and in that case they wouldn't touch them off if a friend were coming in. A vessel engaged in blockade-running has to have some signals when they are going in. A vessel off shore couldn't make the signals, because then the blockading vessel could see it. Very frequently there were signals from shore, and our people thought some of the signals meant a blockade-runner was going to come in. I never thought much of their mak-
95 ing anything out of it. The Newfoundland was out of her way, bound either to Vera Cruz or Kingston, and she has got an hour and a half between 5.30 and 8.30 to account for, in which, I believe, she was loitering outside of the blockade, and I am confident her lights were not burning—the ordinary running lights required by law—before we sighted her, when she was to the eastward of us; we must have seen the masthead light.

Q. From where she was warned by the Tecumseh, if she had made anything like a direct course, would she have passed in such a direction that you must have seen her running lights?

A. We must have seen the light before we started in chase. After we started in chase we would have been abaft the lights. During the chase there would be one or two doubtful times. If you knew the relative position of the ships, you could tell, but it was at night and in coming towards her we must have seen the masthead light; those lights must show five miles, and they often show a good deal more.

Q. When you finally saw the Newfoundland's light-, did they appear to be the average quality of lights?

A. Yes; I should say good lights, oil lights—not as good as electric—and they must have been lit some little time before we saw them. The instant we ran into the proper position to see them, we saw the proper lights; they seemed to be lit up pretty well forward, as if some door might have been opened. The main thing—a very unusual thing for a ship running in ordinary time not to show stray lights, lights through the air ports through the cabin, and all
96 that sort of business; they have several lights—at least 10 or 11. You don't see a dark ship unless she is evidently shut down.

Q. This light that you saw from time to time, did it have the same appearance?

A. We saw it and then we wouldn't see it. It looked like a light without any lens in front; a plain glass lantern or ordinary lantern; sometimes obscured and sometimes not.

Q. When you got up to her near enough to see the vessel you could see this light then?

A. I don't remember about that. The officer who boarded her could tell you more about that.

Q. From her position when she was first warned off Sagua la

Grande, if she had been then making for Kingston, would that carry her by the place you sighted her?

A. It was about 240 miles nearer to Kingston to go by Cape Maysi, and the current is better; 240 miles further to go by San Antonio. I brought up a chart that would show you that better.

Q. Captain Malcolm in his testimony stated that he was going from Halifax to Kingston, as that was the point he had in view when he left Halifax, was to go to Kingston.

A. He was a long way out of the way for Kingston.

Q. Would he have gone through the Crooked Island passage at all if he had gone the nearest and best way?

A. There is a difference between the nearest and the best way. Probably Mariguana was the shortest, but it was not well lighted. Most vessels would take the Crooked Island passage, as it was the best lighted. It is a perfectly correct passage to Kingston, and perfectly correct passage if he had the alternative to Kings-
97 ton or Vera Cruz. If he is going to Sagua and then from Sagua la Grande, Caibarien, he loses 240 miles going around the west end. (Captain Mackensie indicates on the map the positions and passage above referred to.) Another thing that struck me, the captain told me this was his first voyage in the ship, and she is an old sealer, her ordinary line of business, and not a vessel accustomed to cruise in the West Indies, unless there was something to make such cruising profitable, something unusual.

Q. Did he say anything to you about trying to land at Sagua la Grande or Caibarien?

A. Nothing.

Q. Did he say anything about when he first learned about the blockade of the northern coast?

A. He told me he had been boarded by several vessels, and there is an entry in his log that the coast was pretty full of cruisers and gunboats. The blockade of Sagua la Grande and Caibarien was, I think, established in June. I have no official copy of the proclamation. I saw it in the newspapers, and knew it when our ships went down to establish it.

Q. Having come through the Crooked Island passage, if her destination was Kingston, wouldn't her proper course have been around the eastern end?

A. I should say it was 700 or 800 miles out of the way to go by the west end to go to Kingston (indicating on the map).

Q. So it would have been several hundred miles out of the way?

A. At least 600 miles. I can tell you in a moment exactly.
98 This is a pretty good guide from Havana to Kingston; it is about an even thing or distance, the course from Sagua la Grande around the eastern end. Sagua la Grande is a suspicious port, because the Spanish government made special arrangements with the railroads to get provisions in for their troops.

By Mr. BARKER:

Q. Do you know that of your own knowledge?

A. No; I don't absolutely know it of my own knowledge. I

never landed there. This has been reported to me semi-officially by the captain of another ship. That is the trouble to distinguish between what I know and what I have had reported.

By the U. S. ATTORNEY:

Q. The captain of the Newfoundland testified that he was bound to his destination — was Kingston. "She was steering her course towards Kingston; the course was not altered after we saw the ship until we stopped our engines. It was always directed to the course destined by the ship's papers. The course I steered followed out my instructions from Robertson & Company. The courses were in accordance with his instructions as far as my judgment goes." Will you state from examination of the chart how far he was out of his course when captured? The captain testified the course was not altered towards any other port, but the course was frequently altered; that he couldn't tell how often. I will ask this question: The testimony of the captain of the Newfoundland was that her destination was Kingston, and that she was bound for Kingston when captured; will you inspect the chart and say how far the Newfoundland had gone out of her way to Kingston?

A. Do you mean from Halifax to Kingston or Sagua to Kingston?

Q. From Halifax and Sagua both.

A. From the southern end of the Crooked Island passage, going by Cape Maysi, 340 miles to Kingston; going by the old Ba-
99 hamas and up to Cape Maysi, some 1,200 miles.

Cross-examination by Mr. BARKER:

I call your honor's attention and Captain Mackensie's to the standing interrogatory to which that reply insisted upon is directed. (Reads interrogatory No. 36 to the court.)

Q. Have you stated all of the grounds upon which you determined to send this vessel in?

A. As well as I can remember. I don't know whether I stated that we were all warned to expect her.

Q. How were you warned?

A. By official telegrams from the Navy Department.

Q. Have you any of them with you?

A. They would go to the senior officer at Key West, and he would send us typewritten copies.

Q. We will have to rely on your memory. What was the purport of this warning?

A. My memory would be very good. The purport was the Newfoundland meant to run the blockade. I rather think that the district attorney has copies of those telegrams.

Q. Was the telegram from Washington any more than that she was going to Cuba?

A. If you want the exact wording you will have to get the telegrams. I think Mr. Lathrop has them. The information from the consul general was—it is only founded on hearsay of harbors like

Halifax, which do a large business, and I don't know how re-
100 liable—the information was these two ships were to run the blockade. Just as the other day I was at St. Thomas and the information was general in the islands that the Regulus and the Newfoundland had a guarantee from the Spanish government.

Q. And yet she has been released?

A. I don't know what they do at Key West; you see, we did not send our prize into Key West; they have released a great many ships at Key West.

Q. The Government has released her, although she had a cargo at Sagua and landed?

A. Yes; and was caught coming out.

Q. And in spite of that the Government has recognized the propriety of releasing her?

A. I can tell you, furthermore, that she meant to be caught; she was insured for capture—that is, from the captain of the vessel who caught her.

Q. I want to know whether we are not fairly entitled to assume, when you got this warning that this ship had left Nova Scotia, whether there was not, from the position that you gentlemen of the navy had occupied for months, on the lookout for vessels, whether there was not an immediate interpretation put on your minds that she was aiming for Cuba; that she was going to run the blockade.

A. No; because all the politicians and diplomatists in both countries, I don't think, are going to make trouble with the English sea-fearing people and America. I told the captain I would be glad if he could get off, and that I didn't blame him, only
101 Englishmen and Americans make successful blockade-runners; we try to catch them and they try to run in, and it is only a question which is the smartest. I would not have sent the ship in if she had not been spoken by the Tecumseh and then not showing running lights.

Q. You dwelt in your testimony upon the fact that she could not account for three hours and a half.

A. For 12 miles out of 24.

Q. What speed did you attribute to her?

A. 8 knots. I got that from the captain. He said the coal was getting short. He was making 8 knots.

Q. Could you not account for something less than 8 knots for the current?

A. The current is very variable off Havana and we had not had any easterly winds for three weeks.

Q. Didn't you tell the captain there was an east current?

A. In the main the current varies very much; it will be in shore and then off shore. I have been there when we drifted as much as 24 miles a day; ten miles off Havana.

Q. Wouldn't it have been, assuming the extreme point she was making 8 knots an hour, that may have been her capacity or her ordinary run?

A. She was making pretty good speed, for when we pulled her up she had to blow off steam pretty hard.

Q. If running seven knots she would have to blow off very hard?

A. No; with 7 knots they are carrying the fires lighted.

102 Q. In making the calculation, you have assumed she was met by the Tecumseh at 5.35?

A. From the Tecumseh's time, I got that the next morning.

Q. You didn't have that then?

A. No.

Q. When you arrested her that calculation of time had not been made?

A. Approximately, relatively, I can't tell to the mile; I know the Tecumseh's position on the blockade, and according to the captain she was boarded at 6 o'clock.

Q. How did you know the Tecumseh had boarded her?

A. It was entered on the log or register.

Q. You took the log for that as proof. Did you accept the other statements on the log?

A. This statement on the log was by the boarding officer of the Tecumseh. This statement is by one of our own officers, who, when he boards, makes this entry on the log or register of the vessel. That is the practice of nations, and it is impossible for me to account for all the time between——

Q. Assuming she was making 8 knots an hour, it is not possible for you to account for it, taking her start at 5.35?

A. Taking her time at 6, she had two hours and a half—that is, 20 miles.

Q. How far was the Tecumseh from the place she was captured (the Newfoundland)?

A. From where we sighted her, not more than 9 or 10 miles.

Q. It looks like more than 10 miles here?

103 A. I don't quite understand.

Q. From where the Tecumseh lay.

A. Not where the Tecumseh lay; where she boarded her (indicating on the map). The Tecumseh's report is, they boarded her at a certain latitude and longitude, and she gives three miles' limit of their correctness, and where we sighted her is measured from that farthest point, the farthest you can get on that circle, and then that is about 12 miles, and the nearest position is, of course, much less—a little over 4 miles, the nearest position—and so I think she was loitering there. It may or it may not be so; that is what it looks like to me.

Q. What assurance have you that that was the position she was in when you saw her?

A. I have my own position, and we sighted her, and we have to judge the position from the light, and if you consult her log 8.30 will agree substantially with where we sighted her. She puts herself 10 miles north of the Morro, and that agrees almost exactly.

Q. I understand that you recognize that there is a difference between the time of the Tecumseh and that which was kept on board of the ship?

A. She logs at 6 o'clock and the Tecumseh at 5.35, and I estimate that as a difference in the time. Her time agrees, I think, pretty

well with our time. I am not sure; I don't know what time they allowed for boarding her; I think we made it 10 o'clock. I would like to say about the entry in the log. I only made that because the captain asked me to do so. I suppose to clear himself
104 with his owners.

Q. Suppose she was not going 8 or 7 knots?

A. There would be still time to account for.

Q. She being at a point east of north from Havana light would be about how many miles from a due north point; how much would that point represent?

A. It depends on how much she was off; how far off she was from the light; how much distance she would have to cover one point; it is a circumference of a circle; one point is $\frac{1}{8}$th of a right angle.

Q. At 17½ miles off there would be an opening of very different extent than what there would be at 10?

A. Exactly what 17½ is to 10.

Q. Suppose that was 3½ miles?

A. I would rather work it out.

Q. We have worked it out on the chart, and thus you find her seventeen miles according to your estimate—seventeen miles from Havana light to the west of north and south lines?

A. I think she was north-northwest, westerly. I would have to refresh my memory. "About 17 miles north-northwest of Morro."

Q. Taking our calculation, which is about 21 miles, there is a difference between the captain and yourself as to the distance of Morro light.

A. The light was well in sight; it is an 18-mile light.

Q. It is 21 miles light when it dips?

A. It depends on the eye.

105 Q. At 15 feet elevation from the sea; it is laid down on the chart; you can see it 21 miles when it dips, and that was the foundation of the captain's calculation that he was 21 miles off. Your memorandum, put on the log, makes it 17 miles. Taking it as 21 miles and the bearings as stated, north-northwest half west, we calculate on the chart 10½ miles further; we begin with 3½ where she was at 8 o'clock, and then 3½ miles from the light, due north from Havana to the east, and travelling 3½ she goes a little further west 10½ and reaches the point you overhauled her; that gives her 14 miles from 8 o'clock to 10, and at a speed of 7 miles an hour she would exactly accomplish that distance, going in an absolutely straight line.

A. From 8.30 to 10.30?

Q. No; really from 8 o'clock; that distance I gave you—the memorandum of the captain on the log. He took his position at 8 o'clock and then ran two hours in a due west course to the point where he was captured.

A. I think he logs his position 8.30.

Q. The log. I am speaking of the captain's taking his position.

A. His position is put down in Captain Malcolm's log?

Q. No; because the mate's calculations are put on the log, and

the captain's are put on the chart, and he took his position at 8 o'clock and found himself one point east of north of Havana light, and from that point to the point where you stopped him is, according to our calculation, 14 miles, in those two hours, running a straight due west course at the rate he gives of about 7 miles an hour.

106 A. Running due west.

Q. About 7 miles an hour, unless he ran 8 miles an hour, there was not any possibility of this divergence from that course due west, as all the testimony is from the crew of the Newfoundland. They were under the impression they were running a straight course west. They were all examined separately, and they all concurred in saying she ran a westerly course. Captain Malcolm stated in his testimony after he left the Tecumseh a little after six that the captain of the Tecumseh told him not to go any nearer the shore, and, acting under that, he bore off one point north by west and followed that for two hours until 8 o'clock, when he felt that he was far enough off and took again his westward course. In the meantime the others on board the ship testified that her course was west. They did not notice the single point of divergence at 8 o'clock; that is the situation as we understand it.

In recurring to the points of suspicion that affected your mind you mentioned that this vessel was ordinarily a sealer as you understood, and that there was no reason for her being in those waters in the West Indian trade unless there was some special incentive. Was that a wrong in your idea, to carry a cargo from a neutral point to an unblockaded point in Cuba?

A. I don't think it wrong to try and run the blockade.

Q Going with instructions not to enter a blockade port, was there anything wrong or suspicious inherently for a man having a cargo from a neutral point to go to a port in Cuba?

A. I don't think there is anything wrong in running the

107 blockade if he can do it.

Q. It was noted as an argument of suspicion that he was a sealer and out of his course as a sealer, and that he was in the sacred waters of the United States surrounding the island of Cuba; I don't know how many miles, but there he was; he, being a sealer, was not where he ought to have been, and it must be for some ulterior reason?

A. I think that it was. I think he was there for that, if you ask me. I don't understand that I am on trial here.

Q. Yes; you are to a certain extent; it is upon your suspicions and statement that this question of whether the ship and cargo shall be condemned or not.

A. When it comes to the owner suing me, I should be on trial.

Q. We have the right to sift the foundation of your mental condition at the time you entertained the suspicions when you arrested this vessel.

A. I wish you could have been in my office that night, with all the ports opened, and screens.

Q. I call your attention to the fact that things can look very sus-

picion when looked at through suspecting glasses, and you gentlemen of the navy down there had been living down there in the palace of suspicion; you had been looking for blockade-runners?

A. Yes.

Q. And took intimations of any vessel coming towards the coast of Cuba, and when you saw this light off about two miles beyond your position you made your course for it?

A. Yes.

Q. You couldn't see that vessel at that time?

A. No.

Q. There was nothing to indicate the vessel being there,
108 except the accidental light?

A. No.

Q. You have assumed in your testimony that she had concealed her lights prior to that time because your people had not seen the lights. I want to ask you whether that is a reasonable conclusion for the court to arrive at or you to arrive at in your judgment of this intention of these parties. Because you didn't see the light, is it to be fully and conclusively assumed that those lights were concealed?

A. I think absolutely reasonable. I think we had the best lookout on the bridge of the Mayflower I know of. I had two men, both trained, come into the service since the war, one the mate of a vessel and the other the master of a New York tug. They came in for the service of the war, and they didn't do anything but keep a glass to their eye, and we saw everything to be seen. It is very strong proof when you see a faint light at a couple of miles off; not a brighter light to be seen. You know how the masthead light on a steamer will show over 5 or 6 miles off. It is good, and covered with a lens, and cannot be mistaken; and before, when the Newfoundland was to the eastward of us, we must see that masthead light, if lit. I had not the least idea they were lighted until the captain told me they were lighted. After we were chasing them they were all lighted.

Q. You have introduced an idea into this case—innocently pasted on that log your verdict about that vessel. I don't think you measured at all the extent of the harm you were doing.

A. The captain of the steamer asked me to put something on his log—something for his owners—and that is what I gave him.

Q. When he asked for bread you gave him that?

109 A. That never occurred to me.

Q. Does it occur to you now when you read that memorandum that it is your condemnation of this vessel for attempting to go to the port of Havana?

A. No; I am not to give the captain all of my reasons.

Q. You wanted to give him something to help him with his owners?

A. I wanted to put down where I seized him.

Q. You put down there your full suspicions and the extent of them for seizing him?

A. No; I don't think I mentioned his lights or about his loitering?

Q. I think you inadvertently fixed him in this memora*d*num as much as if you had seen the Tecumseh and had had time to sit down and consult with them. (Reads memorandum from log.) You thought that would help the master with his owners?

A. Is there anything there about the lights not showing or anything about his running the blockade? Then I didn't say the regulation lights were not lit.

Q. You only said occasionally visible?

A. No; I said a little faint light, afterwards only occasionally visible; that had no reference to her running lights, nor were there any words about her loitering. I made up my mind that as soon as I saw the Tecumseh had boarded her that I would see the Tecumseh the next morning.

Q. Did you in your estimate of her suspicious conduct take it that she was on the west course, and when you detected her she was farthest from Havana, when you saw the faint light?

A. I don't know how much she took us for.

Q. You didn't carry lights?

110 A. No; not when we could help it. We don't intend for them to see us.

Q. I want you to be very indulgent to me on the question of nautical terms and nautical knowledge I may have on these matters. I want to get from you really the statement of what your view of this matter will be, and I tell you frankly I want to get you to admit — the apparent changing of her course to you may have been an effect consistent with her going on an absolutely straight westerly course while you first followed on one side and then on the other.

A. I admit *I* that *that* maybe she didn't change her course; it is possible but not probable that we would overrun her course.

Q. You were overrunning the light on the port side?

A. We never saw her port light.

Q. Suppose the companionway of a ship with an opening on the port and starboard side and a lantern hanging in the companionway, the light of which would be visible at certain points through each of those openings, she going now on a w-sterly course and having passed a point two points abaft the beam, where you would lose the sight of the light if you saw it before, it would be possible for her in her position relative to your position to open to your vessel the lantern showing through the port opening of the companionway?

A. Oh, yes; I have not seen the companionway. You probably can get positive information from the boarding officer.

Q. I am giving you a hypothetical case. Assuming there is a companionway and a lantern hanging in it and there is on the port side an opening, through which that light would be visible at a certain angle, and another on the starboard side, through which

111 it would also be visible, and the vessel going west and you following the light, the light from the companionway, you would bear towards that light as it retired, and in doing that

wouldn't it be possible for you to overrun that course and open the light through the starboard side?

A. Yes.

Q. In that way, assuming you got in that position, you would change your course and bear down a little beyond where you saw that light; she going still west, it was possible for you to overrun that again and open the light on the port side; then you would again bear down on the direction you had last seen the port light, to overtake it?

A. Yes; that diagram will show; that is quite possible, but you can't reconcile it with steering a west course.

Q. I ask you if that, assuming that she took a west course——

A. Not with a west course, we pursuing her; as we pursued her it might happen we would see the light first on one beam and then on another. It couldn't happen, she being ten miles north of Morro and steering west and coming to 17½ miles on the bearings she has given there.

Q. Leaving the Morro out, taking the vessel in mid-ocean pursuing a straight course—a vessel, seeing a light on her, found her due north and steering as soon as she saw her northwesterly course, that vessel going on concealing that light by going on the moment it came two points abaft the beam, would you lose that light if the light was on the port side in the companionway? Wouldn't it be possible to disclose that light on the starboard side?

A. Yes; I have said that several times. If you will look at the diagram you will see that it would be possible.

112 Q. I am going to get Captain Mackensie to testify that this losing and gaining of these lights was possible to happen with a vessel going a straight course in front of one pursuing.

A. Yes; and I drew the thing out the next day when I had leisure, and I came to the conclusion that it was possible for her to be steering a straight course.

Q. So, instead of her doubling and turning, it was your vessel that was doubling and turning?

A. Yes; I don't say it was, but it may have been so.

Q. In spite of your kindly feelings toward the captain and the concurrent testimony of the officers and the log report, you still say it was possible on a west course.

A. I don't say it was possible on a west course, but it was possible on a straight course.

Q. So that, not knowing at that time what the time was by the correct statement of the Tecumseh when she met her—not knowing accurately that she was going any more than 7 knots an hour, upon the basis of her merely not accounting for the time which ought to have elapsed between the leaving of the Tecumseh and the time you saw her and upon the basis of the appearance and disappearance of these lights, coupled with the notification from Halifax, you made up your judgment?

A. I really don't see what I made up my judgment on has to do with this case now. It is the evidence we can produce against the ship.

Q. It is the entire case, because you have nothing in the world—you have sent nothing but suspicions, and we have to follow up the suspicions.

A. Suppose I obtained additional evidence since, has that
113 anything to do with it?

Q. What we want to know is upon what foundation of suspicion you arrested that vessel that night?

A. Yes; I didn't know that. If that is so we can go on. I thought we were here to show what was against the ship.

Q. What particular cause why you arrested that vessel that night? I ask for your suspicions. You have recorded them there on the log.

A. I have not recorded all my suspicions.

Q. Such as they are, they have condemned this vessel in the eyes of the court and the community as a lawful prize of war. What was the foundation of your suspicions? State them so that the court may be able to judge whether you were living in a palace of absolute truth, generously guarded by all that guards a man in the palace of truth, or whether you were living in the palace of suspicion, and this conclusion you reached came from the previous suspisious condition of your mind.

A. We were boarding vessels two or three times a day, and we never sent a vessel in unless we were pretty sure of it. We were not sending in vessels on suspicion. Our navy has nothing to be ashamed of in this war.

Q. I am not questioning your sincerity, but the grounds of suspicion. I ask if you may not have had your mind so filled with the idea of this vessel sailing from Newfoundland to run the blockade that you looked upon everything she did as a suggestion of suspicion.

A. In running the blockade it is like a lot of other things. You don't always catch the person right in the act on a dark night. If he is actually running the blockade and can put up a good gait,
nothing will stop him unless he is afraid of a little gun-
114 powder. Take Havana—that is an absolutely easy place to run. Take Wilmington during the civil war, with thirty vessels at each of the entrances, and at Havana they only had 6 or 8 and no shoals, and it was an absolutely easy matter, because you have to catch the man outside. Another thing, they have very good guns—five or six guns each side—and they do good shooting. So your blockade-runner has to be caught outside. If a vessel warned at half past five and at half past eight is loitering just outside the line of blockade she ought to be sent in.

Q. Say six o'clock.

A. I prefer to take the Tecumseh's time. The Newfoundland makes it six. You have ten miles to account for from half past five to half past eight—three hours. I took her position half past eight from her log.

Q. Suppose she was over two miles?

A. She was not over; very close to two miles; possibly three miles; very close. You get into the way of judging.

Q. It was a faint light?

A. A faint light.

Q You say the light could be seen six or eight miles?

A. The masthead light. The faint light we saw hadn't any lens in front of it.

Q. The distance, you say, could possibly be either six miles or over six?

A. Seven or eight.

Q. At that distance would a lens light of the best kind seem faint the farther off it was?

A. No; the masthead lights with white lenses are so good the minute they come up above the horizon you see them every
115 way. The lights are so good only the round of the world prevents you from seeing them.

Q. You could see it as well at eight as two miles?

A. Very nearly as bright at 8 miles as 2. The masthead lights made in England—those are good lenses—you take a little light, such as you describe, in the companionway; pretty good little light if it were two miles off. As I said, that agrees very closely with the Newfoundland's log, and you take the Newfoundland's log.

A. Yes; that is my ship.

A. (Reading from log:) 8.30, Havana light bearing south 10 miles. I think you will find that pretty close agreement with ours.

Q. So far as the mate's testimony is concerned, it is conceded he made no observation; he only guessed that he was that far from shore; the ship's chart will correct that. Were there any observations taken at the time of the capture of this vessel that would fix the distance from Havana light?

A. The bearing from Morro was taken. I calculated her when we were going in as she left us that, I think, she was over 17½ miles. I think it would be pretty near right; that is a low bridge, but our bridge is higher. I think she was a little further off than 17½ miles.

Q. You don't regard the statement of the captain that it was 21 miles off?

A. I think that was a little over.

Q. There was not that wide discrepancy?

A. I think if you split the difference. I think that night we chased something else, and I think that her back run wouldn't give it to us.

Q. In what direction from you was that second chase?

116 A. I don't remember. We don't think much of chases unless we get something. I don't remember much about it now.

Q. You don't remember whether it was north, south, east, or west?

A. I can tell you what it was. We went off after the Newfoundland. We thought we saw them waiving a light, as if the prize master wanted something, and we went about half a mile and found it was nothing, and then went back to our place. That threw us

out of our place. I ran after the Newfoundland a mile or two until after the light was put down. As to chasing, we chase all the time—two or three newspaper tugs at night; spent over half a ton of coal chasing newspaper tugs, and we don't get anything.

In Reply.

Q. This matter of lights—what you have described as a faint light that you first saw—can you say positively that was the masthead light of a steamer?

A. It positively was not; it was not that sort of light. The navigating officer of the Mayflower boarded the Newfoundland and saw the light in the companionway which counsel has alluded to, and he probably can tell you that it was not a masthead light. It was not that class of light; it was a faint light; very bad.

Q. Was the masthead light burning when you came up to her?

A. As soon as we got in proper position all the lights were burning. My idea is—I had no idea her lights were burning until the captain told me they were burning.

Q. The masthead light—when did you see that?

A. When we got far enough ahead, two points abaft the beam, we saw all the lights—masthead light & starboard. The masthead light is visible—the law requires them to be visible five miles, and they are almost always better made in England. We have
117 some vessels with English lights. In our light-houses down here you can see them ten miles.

Q. How near where you when the masthead light was visible?

A. Within one hundred yards the masthead light showed 20 points on the bow; you go eleven points from the bow and you don't see the masthead light. Those lights were lit when we ran upon her and they had no electric light. Now, the point of suspicion was that we did not see them when we came from the eastward.

By Mr. BARKER:

Q. I want the captain to say, if he was in the wake of the vessel he would see no lights at all, that that would be in conformity with the vessel?

A. Yes; certainly so. The masthead light in port shows all around, but not when at sea. It shows only two points abaft the beam, ten points on each side.

By the DISTRICT ATTORNEY:

Q. In regard to those lights, from the position which my friends have placed her in and your position, in which he says she was running from a point east of north and south lines of Morro light, when she ran on a west course at eight o'clock, taking her position at eight o'clock, then running on a due west course from that point to the point of capture, would she not have passed in such position as you must have seen her lights?

A. You see, it is very close, they said, standing west by north for

a while. If west, we must see the light, but I would have to look at the diagram. If west by north, it is just on the verge of losing the light. (Refers to diagram.) If she is steering west from this position (indicating), we must see her lights, but west by north it would be just on the line. We might see and we might
118 not when she was here (indicating), but we couldn't see it along here (indicating). We must see that light if she was going.

By Mr. BARKER:

Q. I asked Capt. Mackensie to produce the telegrams he received about the Newfoundland.

A. (Telegrams handed witness by district attorney.) Looking over telegrams, my recollection is the telegram was July 6th. I don't find anything here of that date.

By the DISTRICT ATTORNEY:

Q. The position of the Newfoundland, according to the log-book memorandum, July 19th, 8.30, Havana light due south; distance, 10 miles, and from 10.30 p. m., same date, was 21 miles north-north-west half west of Havana. Will you inspect your chart and give the course steered between the points given?

A. I make it northwest by north.

By Mr. BARKER:

Q. Suppose it was 17½ instead of 10 and the point of capture 21 miles instead of 17½?

A. The course would be about due west.

Mr. Barker wishes to have noted an exception to all of the testimony of Captain Mackensie which refers to the position of the Tecumseh and the hour at which she met the Newfoundland.

119 *Testimony of A. E. Culver on Final Hearing.*

CHARLESTON, S. C., *August 31st*, 1898.

A. E. CULVER sworn by the district attorney:

Q. What position do you hold, if any?

A. Navigating officer of the Mayflower.

Q. What position do you hold in the navy?

A. Lieutenant.

Q. Were you on the Mayflower at the time of the capture of the Newfoundland?

A. I was.

Q. State in your own way all the facts and circumstances attendant upon that capture in your own language, giving your statement of the facts from your observation.

A. Between 8.20 and 8.30 p. m. of the 19th of July the Mayflower started in chase of something. I was not on the bridge at the time they sighted the light first, but very shortly after that I went up on the bridge. The time of starting the ship was about 7 miles from

Morro light. The Mayflower, it bore about south by west half west, I think, and when I went on the bridge we were standing north by west in the direction in which the light had been sighted. When I got on the bridge the light had disappeared. Shortly after that I made out the light myself. It was a very dim light, not a steady light, appearing and disappearing; did not remain very long in sight then. After standing on that course some distance north by west the light was sighted more to the westward and we changed our course, heading for it—heading about northwest—and after running perhaps 30 minutes the light appeared again southwest and we headed for it, and later on it appeared again somewhat to the northward and we headed for it again. I think we
120 changed the course three or four times. At about a quarter of ten or 20 minutes of ten we sighted the hull of the vessel and stood for the hull, gradually changing the course so as to keep it head on. I think we got around to north-northwest and when pretty close aboard we fired a blank charge. She came to very promptly, but at that time no lights had shown at all, except this light I mentioned.

In heaving to probably getting round somewhat and in our going ahead of her all of her lights suddenly showed—that is, her regular running lights. Our ship stopped at about 10 o'clock. I was sent over as the boarding officer to investigate her At that time the ship had been pretty well lighted; they had a light at the gangway to receive the boarding officer and the light showed from several portholes. As I went up on deck I noticed from 10 to 12 men leaning over the rail, I said to the captain first thing, "We have been chasing you a long while." He said, "That is strange; he hadn't seen us until we fired the gun." What was rather odd then was that all these men should have been up there fully dressed, a much larger number than the watch would have been, and they showed no evidence of having dressed in haste. They then, in order to show me over the deck, got a lantern from the vessel passageway aft, which I concluded was the lantern we had seen, and they took me into the captain's office or cabin, whatever it was, where he had all his papers ready; also the log. I saw from the invoices that the cargo was flour and general cargo of provisions; that the log stated the vessel had been boarded by the Tecumseh that evening; that the log showed no course after five p. m. or speed; that there were two separate clearances, one to Vera Cruz and the other to Kingston, all of which struck me as being somewhat suspicious. I then asked the captain a number of questions as to where he was
121 bound. He was very vague in his replies, sometimes saying Kingston and sometimes saying Vera Cruz. Finally I asked him if he was shaping his course by way of Cape San Antonio, and he replied he hadn't made up his mind. I then asked him what speed he was making, and he replied that from the time he was boarded by the Tecumseh until he was boarded by us—that is, overhauled, he meant—they were making eight knots; that the speed had originally been nine knots, but finding himself somewhat short of coal he reduced his speed to eight. Taking all those things into

consideration, I concluded that the question was at least suspicious and asked him to go with me on board the Mayflower, where he could see her commanding officer, which he did. Upon returning to the Mayflower I took the bearing of Morro light, which was, I believe, south-southeast half east. I estimated the distance to be between 17 and 19 miles.

By Mr. BARKER:

Q. Before the prize had left you?

A. Yes; the captain was still on board the Mayflower. Quite a long conversation took place in the cabin of the Mayflower, and, as I recollect, the master of the Newfoundland stated that he was going to Vera Cruz. He said nothing about having been bound for any Cuban port, but Kingston and Vera Cruz were the ports of destination. As I was going out of the cabin on deck to see after various things, what I heard down there was disconnected; I can't really tell what the conversation was. I do remember when the captain said he was going by way of Vera Cruz, because I directed his attention to the fact that on board of his own vessel he had stated to me he hadn't made up his mind whether he was going by way of Cape San Antonio, and he said that he had misunderstood the question.

At about midnight, Ensign Pratt having been sent on board
122 with the prize crew, the Newfoundland started off.

The following morning the Tecumseh came within hail; her commanding officer was signalled to come on board. He testified to the fact——

By Mr. BARKER: Don't say what anybody else says.

A. I was summoned to hear what he said as a witness.

By the DISTRICT ATTORNEY:

Q. What is the limit of visibility of Morro light from the Mayflower?

A. I suppose it is 22 miles; it is rather difficult to tell the exact limit.

Q. I notice by the chart it is laid down at 18 miles—fifteen feet above the water level?

A. I reckon from the eye twenty-five feet above the sea, and that would bring it up to 21 miles—that is, on the bridge of the Mayflower.

Q. Do you know the height of the bridge of the Newfoundland?

A. No; I do not.

Q. Is that or not as high as the bridge of the Mayflower?

A. I should think probably lower; but I didn't go on the bridge; in fact, I don't know that she has a bridge. Probably she has some sort of a place over the deck-house. I didn't go on it.

Q. The Mayflower is high out of the water?

A. Rather high.

Q. When you sighted this faint light after coming on board, could you estimate the distance that light was from the Mayflower when

you first went on board the deck? The chase had begun and the light was not in sight when you first went on the Mayflower's deck?

123 A. Yes.

Q. When you first saw it when you came on deck could you estimate the distance from the Mayflower?

A. In the neighborhood of three miles; hard to tell within a mile or two exactly.

Q. Can you say what kind of a light it was?

A. An ordinary lantern, from the way it appeared; either that or a light in the port.

Q. Could it possibly have been a masthead light, running light, on the steamer at a great distance?

A. I think not.

Q. Speaking of it as a faint light you don't mean a distant light, but a small light?

A. Rather an inferior kind of light.

Q. When you went on board the Newfoundland you say the master took down a lantern to show you around?

A. Yes.

Q. Where did he take it from?

A. As I recollect, it was hanging in the after passageway that led to his office, which had a door opened athwart ship.

Q. Was there any other lights in that section of the ship than this lantern he took down?

A. The light hanging in his office.

Q. That was forward of this?

A. Perhaps 10 feet forward or 5 feet. I think it was an ordinary ship's lantern.

Q. Was there a skylight to his office?

A. I didn't see any.

Q. This lantern he took down was hanging in the after passageway?

124 A. Yes.

Q. And the door opened athwart ship?

A. Yes.

Q. Was there any bulkhead that would prevent that light from showing directly in the rear?

A. Yes; it could only have shown on each side. I think there was a door on the opposite side to that which I went in; it could not show but directly forward or directly aft.

Q. How far either forward or to the rear of the line directly abeam could that light have shown through this door?

A. Two points either forward or abaft the beam.

Q. About the same as the running lights?

A. Yes; that is aft, not forward; the running lights are seen all the way from forward.

Q. But the ship's lights are abeam; we see the running lights, but more than two points they would not have shown?

A. I think those lights would have disappeared about the same time the running lights would have disappeared

Q. You say that was an ordinary lantern?
A. Yes; a hand lantern.
Q. How long before you overhauled the Newfoundland before you hove to; how long before that had you last seen this faint light?
A. I don't remember; I don't think we saw it any of the times we saw her hull. I really can't recollect that point; my recollection is, when I first made out her hull I saw no light.
Q. What time was it the Newfoundland left the Mayflower to go with the prize crew?
A. Near midnight.
125 Q. Still dark?
A. Yes.
Q. Did you see her as she was going away?
A. Yes.
Q. How about her lights then?
A. Two or three small lights were visible as she went away. I didn't watch very long. I went below immediately.
Q. Did you make any sketch showing the position of these vessels?
A. Yes; I made a tracing.
Q. At what time did you make that tracing?
A. On the forenoon of the 20th of July.
Q. The next morning after the capture?
A. Yes.

By Mr. BARKER:

Q. That was after the conversation with the officer of the Tecumseh?
A. Yes.

Mr. Barker objects to the introduction of the sketch, based upon the hearsay information received from the officer of the Tecumseh.

A. The only part of that sketch which would come under that heading is the location of the Tecumseh; all the rest of the sketch has nothing whatever to do with it. I will make this statement: I made the tracing based on the bearings I myself took; located the ship at the time we sighted this light and located the ship at the time we overhauled the Newfoundland—I thought our run was between those two points—and then added the position which was given to us and is indicated there in dotted lines by the officer of the Tecumseh; it had nothing to do with the rest of the work.

126 By the COURT: I will take the sketch for what it is worth.

By the DISTRICT ATTORNEY:

Q. Those red lines, what do they represent?
A. The full red lines represent the two bearings which we took of Morro light—the one when the light was first sighted and the one which is put down as south-southeast half east, after the Newfoundland had been boarded, and the dotted red lines indicate approx i

mately what the line of the Mayflower was. That is an approximation.

Q. Then that little black circle in the red lines?

A. The black circle, the lower one, is the Morro light. The small black circle to the right of that is our estimated position of the Newfoundland when first sighted, and the upper black and red circle is her position when overhauled.

Q. You spoke about the master having his papers ready. What papers do you refer to and in what position were they?

A. He had them in his office—clearances, invoices, and log—the ordinary ship's papers.

Q. Whereabouts were they?

A. I think on his desk or near it.

Q. And all together?

A. The log was separate.

Q. Did you call his attention to any of the log entries at the time?

A. No.

Q. Was anything said by him about where he had come from?

A. Yes; he said he had come from Halifax. He stated to me he had been boarded by the Tecumseh and some other vessels.

127 Q. Did he state to you anything about his having intended to enter any Cuban port?

A. Nothing.

Q. You said something about the captain having said to you that he had to reduce his speed.

A. From 9 to 8 knots.

Q. Did he say when he began to reduce his speed?

A. I am not positive. I think he reduced his speed after going through Crooked Island channel. I think something he said led me to infer it was the time he was first boarded. That was after he got down there.

Q. Did you notice anything about the condition of the steam at the time of the capture?

A. No.

Q. You spoke about the men being up there and hanging over the rail when you boarded the vessel. About how many did you see?

A. Ten or twelve.

Q. What would be the ordinary size of the watch of a vessel of that size?

A. I have enquired since, and four or five. I knew the number I saw was much larger than the number would be for a vessel of that size.

By the COURT:

Q. What time does the sun set in that latitude?

A. Not far from six o'clock.

Q. Then it was twilight?

A. There is practically no twilight; perhaps between six and half past six.

Q. It is dark, then, by half past six?
A. By seven it would be dark. As I remember, we had twilight at seven, and at half past seven it was pitch dark.

128 By the UNITED STATES ATTORNEY:

Q. The twilight in that latitude is not as long as in northern latitudes?
A. No; there is very little twilight.

129 *Testimony of W. V. Pratt on Final Hearing.*

W. V. PRATT sworn.

By the DISTRICT ATTORNEY:

Q. What position do you hold?
A. Ensign in the United States Navy. I am serving as watch officer on the Mayflower.
Q. That was at the time of the capture of the Newfoundland?
A. I am ordered to the ship as watch officer.
Q. Were you present at this capture?
A. I was.
Q. State to the court in your own language the circumstances and facts that came under your observation.
A. At about twenty minutes after 8, while I was officer of the deck of the Mayflower, heading east-northeast Morro light, bearing south by west half west, I picked up a small light bearing north by west from us, or a point forward of the port beam. I reported the same to the commanding officer, and he ordered the ship headed for it north by west and the engines rung ahead full speed. Shortly after heading for it we lost the light, but stood on the course about 20 minutes; still not seeing it we put on forced draft, running 135 turns, and about that same instant picked this light up again, a little to the westward, so that by altering our course to head forward again, we were heading north-northwest, the light very shortly disappearing, we changed our course gradually to the westward, until we were heading, possibly, as far as northwest, and we stood on that course about 30 minutes, still not seeing this light. About 9.10 we suddenly sighted the light again bearing southwest right on the port beam and inshore of us. We headed for it again and stood on until about half past 9, when we suddenly saw the light outshore of us and right on our starboard beam; we headed
130 for it again and went to general quarters; my station being below deck, I left the deck, but up to that time I had seen nothing about the ship, no lights except this small light that showed at intervals. When the gun was fired I stuck my head above the hatch and I saw then very plainly that she was lighted; could see the ship very plainly.

By Mr. BARKER:

Q. You ran in front of her?
A. She was lying on our beam then; I couldn't tell how she was

heading or how we were heading. I had been off the bridge half an hour.

By the DISTRICT ATTORNEY:

Q. Did you go aboard of the Newfoundland then?

A. Not then.

Q. You didn't go with the boarding officer?

A. No.

Q. When did you first see the captain of the Newfoundland?

A. I saw him in Captain Mackensie's cabin when I went to get my orders.

Q. Did you have any conversation with him then or hear him say anything about the matter?

A. No; I had no conversation, and I didn't pay any attention to what he said.

Q. When you first picked up this light what did you judge the distance to be from the Mayflower? You were the one who first picked up this light.

A. I gave her 2 miles, or possibly 3 miles, distant; not more.

Q. And what was the character of the light?

A. It seemed to me a poor kind of light, an ordinary kind of light. I didn't take it for a running light at all; it didn't
131 have that character.

Q. You would lose it and pick it up from time to time. Could you identify it as having the same appearance?

A. Yes; I didn't see any difference. I was pretty sure it was not a running light. Had it been a white masthead light I could have seen the side lights, green and red, which I did not see.

Q. After the Newfoundland was captured, were you placed in charge of her?

A. Yes; I was sent on board as prize master.

Q. Did you have any conversation after that with the captain in relation to his voyage?

A. We had several conversations on our way up and at various times, but the first thing we did was to start the Newfoundland off for Charleston, where she was to be brought in, and for that purpose we took his chart and laid the courses off.

Q. You used that chart in sailing from there to Charleston?

A. Yes; I used that except the harbor chart of Charleston harbor, which we got from Captain Mackensie on the Mayflower.

Q. What, if anything, did Captain Malcolm say to you about his voyage—where he was going to go?

A. I think about the second day we were talking it over, and he said he was bound for Vera Cruz, and said he come down the Crooked Island channel, which was not out of the course, to avoid the strong Gulf stream. I asked if he went for Kingston and Vera Cruz, why not go to Kingston and take advantage of the west current, and then in coming back he would take the current both ways, and he said perhaps he was rather foolish, and that he would — so if he had to do it again, so there was no question in my mind that

he was going to Vera Cruz. We talked it over at various times in a pleasant sort of way.

132 Q. About the lights in the Newfoundland, just describe, if you will, the interior of that vessel—I don't know the nautical terms—the rear part of it.

A. In the rear part below the upper deck was taken up with mess-room and cabin of the captain, and also the steward's room and the ordinary air ports around the side of the ship, and while I was on board we always kept a light burning below; then leading down to this place was a square deck-house with 2 doors leading in right from each side, port and starboard side; could go in either way; then the test of the space forward was devoted to the cargo and engines space, and then a small space for the second officers and engineers, then cargo space forward of that, and then crew space, and after that the peak.

Q. Lieutenant Culver said when he was aboard that there was a lantern hanging which the captain took down to show him the way——

A. I can draw a little sketch of the after deck-house.

Q. What I want to know is about how that lantern would show from outside.

A. It would show abeam on each side.

Mr. Pratt makes a sketch of the deck of the Newfoundland, which he explains to the court.

Q. With that light hanging as you describe it in there, what position would a person on the outside have to be in relative to the ship to see it from the outside?

A. He would have to be pretty nearly abeam.

Q. Could it be seen and she not show her side lights or running lights if they were lighted?

A. No; I don't think it could.

Q. You think, then, that in order to see that a person would have to be in such a position that the running lights would show?

133 A. I should think so, because the running lights show abeam, 2 points abaft the beam.

Cross-examination by Mr. BARKER:

Q. Had the Mayflower changed her position up to 8.30 that evening?

A. My testimony on that would only be hearsay. I only came on watch at 8 o'clock; we were steering east-northeast from the time I came on watch.

Q. Under steam?

A. Moving slowly, at half speed.

Q. What is your half speed.

A. I think about—we had been going slowly. I suppose we were going possibly 6 knots.

Q. Steering east-northeast?

A. Yes.

Q. Is there a current there?

A. At that time practically no current; we hadn't any for a month out shore. I sometimes thought 15 miles out we might get a very little easterly current, but inshore of that we generally count on a little westerly set or none at all close to the shore.

Q. Had you taken any observation by which you could determine what her position was at 8.30 p. m. on the evening of the 19th July?

A. I had been told to take bow and beam bearings of the Morro.

Q. Is that from a vessel in motion a sufficiently accurate means of determining distance?

A. That is the only way of taking bow and beam from a vessel in motion.

Q. I want to know how near it would come to guess—how near it would come to accurate measurements.

A. It ought to be true within a quarter of a mile—half a
134 mile from a vessel in motion. If the log is good and certain of the lights, a quarter to half a mile should be pretty close.

Q. Have you the log of the Mayflower here?

A. No.

By Mr. BARKER: I asked for the log of the Mayflower Saturday, and I still ask it to be brought. We want to see it.

By Mr. LATHROP:

Q. I want to know how far to accuracy is a bow and beam bearing observation in enabling you to calculate the distance.

A. A good allowance is half an hour; but I was going on to say further—I hadn't completed my answer—that I hadn't completed my bow and beam bearing. We had started to take it when I sighted this light.

Q. Have you any other data by which you could determine how far from the Morro you were when you saw this faint light?

A. Yes; I took a bearing of the light as soon as I sighted the vessel, and 35 days running on a blockade enables you to tell pretty well.

Q. Your calculations from your habit of seeing them is not as good as the log?

A. Not quite.

Q. Was that observation you took bow and beam?

A. I took a bearing and estimated in my own mind from previous experience.

Q. Your first course, I understood you, after you saw this small light was north by west?

A. Yes.

Q. That means one point north of west?

A. Yes.

Q. How much is a point?

135 —. 11¼ degrees.

Q. How long did you run on that course?

A. About twenty minutes.

Q. Then, I understood, you lost the light?

A. I lost it before I finished.

Q. You continued the course after you lost it?

A. Yes.

Q. After that 20 minutes expired what course did you take?

A. We ran to north-northwest and shifted gradually until about northwest. Changing gradually, we sighted the light again.

Q. How long did you run on that course?

A. About 30 minutes; half an hour.

Q. Did you see the light after you got on that course?

A. Not longer than a minute or two.

Q. How was the light bearing towards your ship at that time?

A. Right ahead. We headed for it.

Q. In that position could you have seen her running lights?

A. I should certainly think I could.

Q. Is it not fair to assert that you could not have seen them, fixed as they are on the ship? Those running lights are not visible two points abaft the beam.

A. In the first place, I want to know what lights you mean.

Q. The running lights spoken of by Captain Mackensie and Lieutenant Culver—the regulation lights on the masthead and sides of the vessel. I believe that they are regulation lights, recognized by the American Navy and merchantmen and the British government.

A. Yes. You mean to ask, Is it not possible that the ship
136 may have *have* been in such a position that you couldn't see the running lights?

Q. If he were running away from the Newfoundland, the Mayflower in *in* her wake, could those lights be visible?

A. If I was heading north-northwest or northwaest, and she was running directly away, I couldn't see them if she was running on a westerly course.

Q. Then there would be some question. It is not absolutely certain if a ship in that position, the regulation lights 2 points abaft the beam, could or could not be visible to you on the course you were?

A. No; it would depend greatly on her heading.

Q. If she had been heading west, would those regulation lights have been visible to you running on that course?

A. If she was heading west—I can tell you that in a moment. Her lights would just be visible in direction from her south-southeast—that is, 10 points; if she was heading west her side light would show from the south-southeast bearing, just begin to show—that is, 10 points if heading west. If I was going north-northwest I would just be getting in the range of her light, just on the edge of it.

Q. How long after you lost the light do you think you ran on that 20 minutes' course?

A. Which time when I lost it?

Q. The second time course.

A. I should say we must have been running a good 25 minutes without seeing the light.

Q. If in that 25 minutes we will suppose the ship had been going west, what would have been her position to you running north?

A. She would have run ahead of us, run over to the left.

137 Q. And the side lights would not be visible?

A. No.

Q. After the second course that you ran, as described by you, the first course was about 20 minutes; the second about 30. After that, what course did you take?

A. We ran on this 30 minutes, until I opened the light on the port beam again.

Q. That second course, 30 minutes, you ran until you opened that light on the port beam?

A. Yes; and then headed directly for it.

Q. That involved your changing your course to right angles?

A. Yes; about southwest.

Q. How long did you run on that course?

A. As near as I can estimate, 20 minutes.

Q. At the end of that 20 minutes, what did you do?

A. We sighted the light again.

Q. In what direction from you?

A. Right on our starboard beam.

Q. And you then changed your course at a sharp angle for it and headed for it?

A. Yes.

Q. Not an absolute right angle?

A. Pretty near; somewhat near it.

Q. You changed again, and how long did you run on that course?

A. I couldn't say; I went below then.

Q. As soon as you saw her, I understood you to say the orders were——

A. To head for her.

138 Q. Under full steam?

A. Yes.

Q. How long did it take to get up full steam?

A. To run up to 100 turns would possibly, running as we were—we would get up to it in 5 minutes.

Q. How long a time did it take—you were running at about 6 knots an hour then—from the order to run for her at full speed, how long did it take the Mayflower to get up full speed? What is your full speed?

A. I think she can make 15 knots.

Q. Not more?

A. I have not seen here make more. She may have been doing a little better that night; she did better that night than before; she made 24 turns; that was in spurts, not steady.

Q. From 6 knots to 15; not more. How many minutes?

A. I would say from half speed, at which we — running to get up to ordinary full speed, which would be 12 knots, possibly 5 to 10 minutes, and then up to the increased speed of 15 knots it was 20 minutes more.

In Reply.

Q. If the Newfoundland had been steering a west course to reach the point at which you first saw that faint light, would you or not have seen her running lights before she reached that point?

A. If the Newfoundland had been steering a west course at the time I saw her, at 8.30——

Q. Previous to that time, when you first saw the faint light, if she had reached that point by steering a west course she came from the east?

A. Yes.

Q. Would you or not have seen her running lights from the Mayflower?

139 A. If she was heading west her masthead light would be visible anywhere from west to south-southeast. She was bearing from us, when we picked her up, north by west, the reciprocal bearing south-southeast; consequently I would have seen it. I am then one point on the visibility of it. It all depends on her heading, entirely, not on our heading. If she was heading west when we picked up this slight light, her lights would be visible all the way from west to south-southeast.

Q. My question is, she having come from the east?

A. I could have seen it before.

Q. Before she reached that point her running lights would have been visible if she had been steering a west course?

A. The masthead light, of course.

Q. Did you see the running lights of another vessel coming from the eastward of the place where you picked up this faint light?

A. No; I shouldn't say I did.

140 *Testimony — G. R. Evans on Final Hearing.*

CHARLESTON, S. C., *September* 1, 1898.

G. R. EVANS sworn.

By the DISTRICT ATTORNEY:

Q. What position do you hold in the service?

A. Lieutenant, junior grade.

Q. What command did you have in July last?

A. Command of the U. S. S. Tecumseh.

Q. Where were you stationed about the 18th or 19th of July?

A. Off Havana, with Morro light bearing between southwest by south and southwest by west.

Q. Did you sight the steamer Newfoundland while on that station?

A. I did.

Q. When was that?

A. In the latter part of the afternoon of the 19th July, about 5 o'clock.

Q. Where was she when you sighted her? What was her position relative to the Morro light?

A. Bearing to the northward and eastward very near, probably nearer to *to* the eastward.

Q. State what you did and what was done by your vessel when you sighted the Newfoundland.

A. The vessel when first sighted appeared to be a schooner; later, she appeared to be a vessel under steam and sail. I ran in towards her about 20 minutes or half an hour before bringing her to. I then sent the mate on board with the usual instructions to examine her papers, question her commanding officer, and report to me.

Q. Can you fix the time that you boarded her?

A. I remember it was about 5 o'clock, because as soon as
141 we started after that vessel I went down below to get my dinner. I was down there probably 15 or 20 minutes when it was reported to me we were very near the vessel.

Q. Can you give her position at the time of boarding?

A. At the time of boarding her I estimated her position to be about latitude 23.15 north, longitude 82.13.

Q. Look at that tracing and see whether you can trace her location on that tracing. (Hands paper to witness.)

A. The location that is placed here inside of the large dotted circle is approximately the correct position of the vessel at the time of boarding.

Q. In what part of the large circle?

A. I should say about the center of the circle; it was within that circle. I wouldn't place her position closer than 3 miles.

Q. But within that circle?

A. Unquestionably within that circle.

Q. You say, then, it was about 5 o'clock when you started in chase and you were 25 minutes to half an hour before boarding?

A. I should say that was the time.

Q. How long was she detained by you?

A. I should say half an hour.

Q. Did you notice in what direction she sailed off?

A. She sailed off on a course northward to westward. The mate cautioned her if she wanted to avoid the blockading vessels she must go northward of west and she started on that course.

Q. I suppose it was then daylight when you boarded her?

A. Yes.

Q. How long after that could a vessel be seen by daylight there?

A. I should say the vessel could have been seen by means
142 of night glasses three-quarters of an hour later.

Q. As a matter of fact, did you keep watch of her or not or pay further attention to her after she left?

A. I didn't keep watch of her any length of time. I saw she stood off clear of the coast and was apparently all right.

Cross-examination by Mr. BARKER:

Q. Previous to your sighting the smoke of this vessel on the 19th, what was your position, the Tecumseh, in reference to Havana

light? I don't mean the bearing; you have given that; I mean the distance and the distance from shore.

A. Previous to sighting the sails of the Newfoundland——

Q. You saw the sails first?

A. Yes; we took her to be a schooner. Previous to sighting the sails, I was about 6 or 8 miles to the north and eastward of Havana light.

Q. How far from shore in a direct line?

A. Probably 3½ miles from the nearest shore.

Q. Was that your usual place?

A. At that time that was my usual position, drifting with the current, maintaining a position between the bearings that were prescribed.

Q. What were those bearings?

A. At that time southwest by south and southwest by west; Havana light between those bearings.

Q. Were you under steam?

A. Yes. At the time of sighting the light I was probably drifting, the engine not turning over, or I might have been steaming very slowly—just turning over.

Q. After you saw the light, what orders were given in regard to the steaming of your vessel?

143 A. To head for the vessel and proceed as fast as possible.

Q. What is your full speed?

A. At that time it was about 10 knots.

Q. Ordinarily is that her full speed on passage?

A. The usual speed of the vessel is between 9 and 10 knots.

Q. At that time in what direction was the sail moving?

A. She was standing to the westward; she might have been standing a little to the southward of west, but her course was about west at that time.

Q. Was your vessel visible at that distance from her?

A. Yes.

Q. Did she change her course while you were moving towards her?

A. As near as I saw, she kept the course until I got close, then she ran to us. I could have gone alongside without lowering a boat, if I desired.

Q. And you estimate it took you from 20 minutes to half an hour to go from the point where you sighted her to the point where you met her?

A. I do.

Q. Those calculations that were referred to on that chart as designating the probable position of the Newfoundland at the time you met her, were they taken by observation?

A. They were not; they were estimations.

Q. You said it was about 5 o'clock; did you make any note at that time, any memorandum of your own or the vessel's, at what was the hour you sighted her?

A. It was recorded in the official log of the ship.

Q. Have you that with you?

A. I have a copy of the log from 4 to 8 o'clock.

Q. Have you it here with you?

144 —. Yes (handing copy of the log to Mr. Barker). "4 to 8 p. m., fair weather. At 5.15 sighted stray steamer to the eastward; stood over to her. She proved to be the Newfoundland, of Montreal. From board bearing at 5.35 she proved to be bound *for* Halifax to Vera Cruz and Kingston, Jamaica, with general cargo. On overhauling her papers, found her register endorsed by the Hudson. The Badger endorsed her log, with warning latitude and longitude."

Q. You advised the captain, I understood you, if he wished to avoid any encounter with the blockading fleet to bear off—not to go any nearer the shore?

A. The mate reported he had so advised the captain.

Q. It was not you?

A. I did not board the vessel.

Q. And you say he did, after he left, take a course north of west?

A. Yes. I think his course was about west by half north; to the northward of west.

Q. She was on that course when you left her, about 6.30?

A. When I left her, in the vicinity of 6 o'clock.

Q. You were with her half an hour. You came to her at 5.35, and you were together about half an hour.

A. Yes; and we would have separated in the vicinity of 6 o'clock.

Q. She got under way?

A. At once.

Q. You made no comparison of your time with the Newfoundland's?

A. No.

Q. What course did you steer after you left the Newfoundland?

A. I stood leisurely back on about a southwest course.

Q. In the direction of Havana light?

145 A. The general direction of Havana light.

Q. As you pursued this course, this vessel was for some time visible?

A. Yes.

146 *Testimony of A. R. Nickerson on Final Hearing.*

A. R. NICKERSON sworn.

By the DISTRICT ATTORNEY:

Q. What position do you hold in the service?

A. Executive officer of the Tecumseh.

Q. Were you present at the sighting of the Newfoundland off Havana light?

A. I was.

Q. State in your own language your knowledge of what came within your observation.

A. The vessel was sighted northward and eastward; at 5.15 we started chasing her; we boarded her at 5.35 exactly; returned on

board our ship about 5.50 ; was absent from our ship a little better than 10 minutes, not more. I found her papers had been registered by the Hudson and the Badger, and I endorsed the log and warned the captain if he wished to avoid further trouble with the blockading fleet to keep to the north and west.

Q. Is that your endorsement (handing log to witness)?

A. Yes.

Q. Did you have any conversation with the captain of the Newfoundland at the time?

A. Nothing more than that he told me he had sighted different ships, and had been overhauled by the Hudson and the Badger, and he asked if there were a number of ships to the westward of our position, and I told him 30 or along there; that — might have been a few more than there was, but there were quite a number.

Q. Was anything said about his destination—where he was making for?

A. Not that I remember. His clearance papers showed that he was bound for Kingston and Vera Cruz.

Q. You don't recollect that he said anything about his destination?

A. Not that I remember.

147 Q. Can you locate the position of the Newfoundland at the time that you boarded her?

A. Within 3 miles.

Q. (Handing tracing to witness.) Find it on that.

A. The centre of that circle is within 3 miles.

Q. What was your position at the time of the sighting the Newfoundland relative to Morro light?

A. 6 to 8 miles from the light and about 3½ to 4 miles from the nearest shore.

Q. What direction was Morro light bearing from you?

A. About southwest; it may have been a little either side of it.

Q. How far was she from you when you sighted her?

A. I should say 9 miles.

Q. And in what direction?

A. Northward and eastward.

Q. And what course was she sailing?

A. Apparently steering west.

Q. Can you estimate the distance that the Tecumseh sailed from the place she was lying at the time you sighted her until you ran up to board her?

A. I should say a little better than 4 miles, in the time we were running.

Q. And in what direction did your vessel sail?

A. Northward.

Cross-examination by Mr. BARKER:

Q. You were 6 miles, you think, from the Morro?

A. Between 6 and 7 miles from the Morro.

Q. Call it 6½, and you saw her 9 miles off, you think?

A. Yes; about that; maybe a little closer to 8 than 9.

Q. That would put her 15 miles from Morro when you saw her?

148 —. 14½ to 15 miles.

Q. How far would that locate her from the shore?

A. About 8 miles.

Q. Did you see her after you left the Tecumseh?

A. For, I suppose, about 10 minutes.

Q. That is, she was only visible to you for that time?

A. It began to settle down dusk then.

Q. When was the latitude and longitude mentioned on that chart taken?

Q. The position was corrected at noon time by cross-bearings.

Q. That put down on the chart is that taken by observation?

A. No; from bearing in the tower.

Q. That latitude and longitude——

A. That latitude and longitude, the position at the time of overhauling, is estimated—estimated from 12 o'clock aboard of our ship.

Q. If you are able to state the latitude and longitude, why can't you state exactly her position instead of stating it within 3 miles?

A. You see, we had run 4 or 4½ miles and a big heavy set of current from the Gulf stream close in shore.

Q. Running eastward from west?

A. The current was running east; we were running northeast. The current was running to the eastward.

Q. During the 10 minutes after you left her, what course was she apparently pursuing?

A. She apparently stood one or two points to the north of west.

149 FOR RESPONDENT.

Testimony of Capt. F. N. Malcolm on Final Hearing.

Captain F. N. MALCOLM sworn.

By Mr. BARKER:

Q. What vessel do you command?

A. The Newfoundland.

Q. How long have you been connected with that vessel?

A. I joined her the first of July of the present year.

Q. Were you with her on any previous trip than the one now discussed?

A. This is my first voyage in the ship.

Q. Who put you in charge of that vessel?

A. Captain J. A. Farquhar.

Q. What was his relation to the vessel as you understood at that time?

A. I understood he was the owner of the ship.

Q. He was the managing owner?

A. As far as I understood, he was.

Q. At the time you were put in charge of the vessel was she not chartered?

A. I did not see the charter-party until some time after I was put in charge of the ship, but I know when I did see it. I saw it was executed between J. A. Farquhar and Musgrave & Co.

Q. Look at that paper and say whether that corresponds with your recollection of the charter-party you saw.

A. Yes; I think this is the same one or a copy of it.

Q. What is the date of it?

A. 29 June, 1898.

Q. Who is she chartered to?

A. Musgrave & Co.

Q. Of what place?

A. I don't see their address here—yes; here it is, Halifax, N. S.

Q. In print?

150 A. Yes.

Q. Who is she chartered by?

A. James A. Farquhar.

Q. Does the charter-party read, "To be employed in such lawful trades between several port or ports in British South America not north of the River St. Lawrence, and the United States of America, and the West Indies and Central America and the Caribbean sea and the gulf of Mexico and South America not south of the River Platte"? Each of those "ands" have an "or" underneath it.

A. Yes.

Q. All in print?

A. Yes.

Q. The words following are in manuscript: "Including Cuban open ports no contraband of war to be shipped, charterers to insure vessel against capture and (or) seizure to her full value at their expense"?

A. That corresponds with this.

Q. You find those words in the charter-party?

A. Yes.

Q. Did you receive any instructions from Capt. Farquhar, owner of the vessel, in regard to her disposition?

A. I did.

Q. State what they were.

A. He told me that I was to carry out the terms of the charter-party, and he told me not to — into a blockaded or attempt to go into a blockaded port; he told me that, not to go near the blockade.

Q. Where were you when that conversation took place?

A. On the Newfoundland.

Q. After taking charge of her?

A. Yes.

151 Q. Whose instructions did he tell you to follow?

A. To carry out—follow out the instructions of the charterers, Musgrave & Co., also the instructions of the shippers, Robinson & Co., if such instructions were not at variance with the terms of the charter-party. I think those were the words he used.

Q. Did Musgrave & Co. give you any instructions?

A. Musgrave & Co. instructed me to carry out the instructions of Robinson & Co., where those instructions were not at variance with the terms of the charter-party.

Q. Where were Robinson & Co.?
A. I understood they were at Montreal.
Q. You never saw them?
A. No.
Q. How did you receive instructions from Robinson & Co.?
A. Through Capt. Farquhar; he had a letter in his possession from Robinson & Co., which he showed me. It contained instructions from them as to the voyage.
Q. What were those instructions?
A. As near as I can remember, they stated that they had taken the ship for the voyage—I am not sure about the language—and that I was to clear the ship for Kingston and Vera Cruz, and that when the ship was loaded I was to proceed with all haste to the north coast of Cuba and enter either the port of Sagua la Grande or Caybarien and there deliver the cargo to the order of the shippers. If those ports were blockaded I was not to enter or attempt to enter, but I was to proceed to Kingston, Jamaica. That is as near as I can remember.

Q. When was the cargo taken on board?

152 A. Between July 1st and July 9th.

Q. I forgot to ask you whether that letter of Robinson Co. read to you by Capt Farquhar was given to you by Capt. Farquhar; whether you had it in your possession.
A. The letter was given to me to read.
Q. Was it retained by you?
A. No; I returned it to Capt. Farquhar after reading. I read it over twice.
Q. What course did you take?
A. A southerly course at first. Then I steered down for the Crooked Island passage.
Q. You steered for the Crooked Island passage after or before you crossed the Gulf stream?
A. After I crossed the Gulf stream I shaped the course for the Crooked Island passage.
Q. After passing through Crooked Island passage what course was taken by you?
A. I shaped my course to the westward to pass through the old Bahama channel.
Q. Was that in the direction of Sagua and Caybarien?
A. It was.
Q. Did you keep any record of any kind of the sailing—of the progress of that ship from Halifax?
A. I did.
Q. In what way?
A. I put the ship's position on the chart every day.

Q. You had a chart of your own?

153 A. Yes.

Q. And you put on that chart every day the position of your ship?
A. I did; I also kept a book I used for working the chronometer

sights and meridian altitudes, and I kept that book. I have that book still on board.

Q. From that memorandum book you put on the chart the position of the ship every day?

A. The ship's position on the chart from that book.

Q. After leaving Crooked Island channel and bearing westward in the direction of Caybarien and Sagua, into what waters did you yet?

A. I got into the old Bahama channel first. That was the first channel I got in.

Q. How close does your course at that point carry you to the shore of Cuba?

A. If I was in mid-channel I would be about 4½ miles from the Cuban coast—in mid-channel in certain places in the channel not more than 4½ miles.

Q. About what point did you encounter the first blockader?

A. I spoke the U. S. S. Badger. She boarded me about 14 or 15 miles off Maternillos point, Cuba.

Q. Is that point on the coast of Cuba or on an island north of the Bahama channel?

A. On the coast of Cuba, at the entrance to the harbor of Neuvitas, about the entrance, I think; I think it is on the west entrance to Neuvitas.

Q. Did you submit your ship's papers to the boarding officer of the Badger?

A. I did.

154 A. I did.

Q. Did he make any memorandum upon any of the ship's papers?

A. He endorsed the ship's register.

Q. Is that the ship's register (indicating)?

A. Yes.

Q. Look on the back; is that the endorsement?

A. Yes; the endorsement made by the boarding officer of the Badger.

Q. Do you recollect his name?

A. Lieutenant Titus.

Q. Read it.

A.—

"OFF NEUVITAS, CUBA, *July* 18, 1898.

I hereby certify that I have this night boarded and examined the British steamer Newfoundland, bound from Halifax, N. S., to Vera Cruz and Kingston, Jamaica. I find her papers to be in accordance with the requirements.

EDWARD McC. TITUS,
Lieut. U. S. Navy, Boarding Officer from U. S. S. Badger,
Commander Albert S. Snow."

That is what is on the register.

Q. What time is that?

A. About one o'clock in the morning.

Q. Before daylight?
A. Yes.
Q. Did you see the Badger before she boarded you?
A. I did.
Q. What lights?
A. She had no lights when I first saw her, but I sighted her first on our starboard bow, probably quarter of a mile distant.
155 She came around, crossed our bow, and steamed up towards me on the port side, and when within 200 yds. she flashed some lights on the foremast. I didn't know what they were, and she then passed astern of us and turned round and stood off of us, and then after she had been in that position a little time she fired a gun.
Q. What course were you then sailing?
A. I don't remember the course west; I don't remember whether due west or not. I spoke the ship when the gun fired and the boarding officer came on board.
Q. Did you ask him any questions?
A. I did; I asked him about the blockade in Cuba, and he told me the whole island of Cuba was blockaded.
Q. Were your lights up at that time?
A. My lights were burning.
Q. What lights?
A. The customary lights; the lights prescribed by the board of trade for steamships to carry when under way—the masthead light and two side lights.
Q. Were those lights of any very strong lens power?
A. No; not very strong lights; just the ordinary lights used aboard steamers.
Q. How far was the masthead light required by regulation to be visible?
A. 5 miles.
Q. How far were the side lights visible?
A. The side lights were required to be visible at least 2 miles.
Q. Could the commander of the Badger have seen you unless your lights were visible?
A. Oh, yes.
156 Q. At that time?
A. He could have seen me, because I saw him and he had no lights.
Q. You saw him how far off?
A. I don't know; I should say a quarter of a mile when I first saw him.
Q. Not 2 miles?
A. No; not that distance; that night you might have seen the ship half a mile without lights.
Q. More than that?
A. I don't think you could see the hull of the ship more than half a mile that night, especially one of the blockading ships; they are painted lead color. He might see my ship before I could see his.
Q. Your ship was larger?

A. Not larger, but she is painted black.

Q. Did you ask Lieutenant Titus, before leaving, any further questions?

A. I did. I asked him if there was any danger in my going west, when he told me that the whole coast of Cuba was blockaded.

Q. After he told you that?

A. Yes. I asked if there was any danger in my going west. He told me no; that there was no danger whatsoever, and that whenever a ship spoke me or boarded me to show all my papers.

The district attorney objects to the witness stating what is told him.

Testimony rules out as incompetent.

By the COURT: If the Government has offered testimony as to that conversation, then it is competent for you to bring out from the witness or in any way the whole conversation. If there is any conversation between this witness and Lieutenant Titus offered by the
157 Government you have the right to bring out the whole conversation.

Mr. Barker refers to answer to question "#22" of the standing interrogatories.

By the COURT: Now, I think it competent to bring out the whole of the conversation relating to the island being blockaded, that being part of the testimony.

Q. After he told you the whole island was blockaded, I understood that you put to him the question whether you could safely go to the westward?

A. Yes.

Q. What else did he say?

A. He told me when one of the U. S. ships spoke me or fired a gun to stop my engines and when the boarding officer came on board to show him all my papers, and also to show this endorsement he had put on the register, and he told me I would have no trouble in going along that north coast, where it was blockaded, unless I attempted to run in; that was as near as I can give his answer.

Q. After leaving the Badger what course did you take?

A. I proceeded on a westward course.

Q. Did you pass Caybarien?

A. I did.

Q. Did you see any blockading vessels at that port?

A. Not a ship in sight, when I passed, of any kind.

Q. Was there anything to prevent your going in?

A. As far as I could see, nothing. I don't know what was inside.

Q. Did you pass Sagua?

A. I did.

Q. Was any blockading vessel there?

158 A. I didn't see any ship off Sagua.

Q. Was there anything you could see to prevent your going into Sagua?

A. Nothing that I could see when I passed. I saw a ship to the westward, but some little distance.

Q. How far to the westward?

A. Appeared to be about 12 miles west of Sagua.

Q. What time of day or night did you pass Caybarien or Sagua?

A. I passed Caybarien about 5 o'clock in the morning—between 5 or 6.

Q. You have stated in your testimony *in preparatorio* that you had been told as part of the instructions from the owners of the cargo and the freighters of the vessel, Robinson & Co., that a tug would be waiting for you in Sagua or Caybarien.

A. A pilot.

Q. You knew there were people waiting to receive you in Caybarien or Sagua?

A. I expected from Robinson & Co.'s instructions there would be.

Q. Notwithstanding those instructions and that information, you passed those ports?

A. I did.

Q. And you say you saw, about 12 miles to the west of Sagua, a blockading vessel?

A. I — know whether a blockading vessel or not. I passed her in the night. She did not board me; she didn't have the usual lights, and I supposed she was a United States ship of war.

Q. Did you continue on that course?

A. I did.

Q. What next did you encounter?

A. The U. S. S. Hudson.

159 Q. Was that at night or day?

A. 11 o'clock on the morning of the 19th.

Q. Were you boarded?

A. I was and came alongside, and the mate came aboard and examined the papers.

Q. Make any memorandum?

A. None whatever.

Q. After leaving the Hudson did you encounter any other U. S. ships?

A. Yes; the next ship was the Tecumseh.

Q. You were still sailing west?

A. I was steering a west course when the Tecumseh boarded us.

Q. Generally westward?

A. Yes.

Q. According to the time on board your ship, at what hour were you spoken by the Tecumseh?

A. 6.10 p. m., July 19th.

Q. Have you a chart with you by which you recorded your positions?

A. Yes.

Q. I wish you would show the court the course you pursued with your vessel from Crooked Island channel to the point where you met the Tecumseh.

A. Very well.

Q. What chart is that?
A. A general chart of the West India islands.
Q. Issued by any authority?
A. The British Admiralty chart.
Q. Containing soundings and sailing directions?
A. The soundings are marked.

Q. Is that the recognized authoritative chart by which
160 other persons engaged in commerce in the Dominion of Canada or England go by?
A. Yes.
Q. Does that chart belong to the ship or you?
A. To me.
Q. I understand you that that chart is a memorandum kept by you from day to day of the progress of your voyage?
A. I invariably put the ship's position on that chart every day—on this chart when we were in these waters.
Q. It is a cotemporaneous memorandum made by yourself which you swear were the ship's positions made day by day?

By the DISTRICT ATTORNEY: I then object, as that ought to have been placed in the possession of the prize master and has no business to come in here now, and, if a private memorandum, it cannot be used now in behalf of the ship. If it is a ship's paper, it should have been in the possession of the prize commission; if private, he has no business here in court with it; we must go by the papers in the case.

By the COURT:

Q. Did you show this to Mr. Pratt?
A. I used it on board the ship. I had it; Mr. Pratt saw it; I did not know he wanted this.

If it is a fact that Mr. Pratt, prize master, saw this chart and used it, it is no imputation upon the ship that it was not given up. All the papers and documents on the ship were under Mr. Pratt's control. If he saw this chart and did not see fit to send it up with the other papers in the case, no inference one way or the other can be drawn from that. That is a different case from concealment. If there is anything on this chart that was not there when he
161 saw it, then it must be rejected as cotemporaneous memoranda.

Q. Will you show to the court and put your finger upon the course of the ship from the Crooked Island channel into the Bahama channel and the point where you met the Badger from the point where you met the Tecumseh?
A. The witness indicates on the chart the positions above indicated.

(The first chart produced was the one that he used up to a point opposite Sagua, and the second chart he used after passing Sagua.)

Q. From the data on those charts can you refresh your memory and give the number of miles traversed by the ship between Crooked

Island channel and the point where she was arrested, and from that ascertain the speed of the ship, the rate at which she was going?

A. At half past 11 the reading of the log was 10, at 6.10 the reading of the log was 42½, making 52½ miles sailed in six hours and 40 minutes.

Q. From that chart are you able to say what was the average rate of speed of your vessel?

A. The average rate of speed was from 7 to 8 knots.

Q. As you travelled through the Crooked Island channel and the Old Bahamas?

A. Going very nearly the entire passage, that was the rate of the ship—from 7 to 8 knots.

Q. At any one point between the Crooked Island channel and the point of your being captured by the Mayflower was there or not any material divergence from a straight course?

A. No.

Q. There was not?

A. No; I followed the line of the Cuban coast along, pro-
162 ceeding in a generally westerly course.

Q. You had the coast in sight on your port side?

A. Yes; in the day, on her port side.

Q. Any vessels of the blockading fleet were in what direction from you, generally? I am not speaking particularly.

A. The blockading squadron off Cardenas were hull down in shore when I passed Cardenas. I did not see any ships off Matanzas. I think we were too far off. I couldn't see any then. I saw a ship to the westward of the Tecumseh after I passed the Tecumseh hull down in shore again, and the ships were all in shore from me.

Q. They were, as you saw, all inshore?

A. Only one ship I saw off shore of me, the Badger, except a ship that signalled me when I was running along the coast, a ship running the same way I was. She overtook us and signalled.

Q. Was she a warship?

A. She hoisted the American ensign and I hoisted my ensign, and he sailed in the direction of Key West.

Q. From your recollection or from that memorandum, refreshing your memory from it, can you state the distance you were off shore at the time you met the Tecumseh or the distance you thought you were off shore?

A. I was 14 miles off shore, right off the nearest land, when the Tecumseh boarded me, sailing on a westward course then.

Q. After you met the Tecumseh, what course did you sail?

A. I steered west by north until 8 o'clock.

Q. One point north of west?

A. Yes.

Q. For how long did you follow that course?

A. About an hour and a half until 8 o'clock.

163 Q. That is, assuming you left the Tecumseh at half past 6?

A. That was the time the Tecumseh left us.

Q. From that time till 8 o'clock you steamed one point north of west?

A. Yes.

Q. At 8 or after 8, what course did you follow?

A. I kept the ship again on her course after 8 west.

Q. What made you put yourself on the course one point north of west after you met the Tecumseh?

A. The boarding officer of the Tecumseh advised me not to go any nearer the land. I told him I was steering a westerly course. He said, Don't go any nearer; if you do you may get a shell in you. I hauled the ship over west by north and went that course until 8 o'clock (8).

Q. What made you change your course, then, to west?

A. I thought I was far enough off shore. I considered I was way outside the blockading fleet.

Q. How stood you, *tehn*, to the Havana entrance?

A. At 8 o'clock Havana light bore about south by west.

Q. You were to the northeastward of Havana light at 8 o'clock?

A. About one point east of north.

Q. And you put the vessel back on the west course, which she had been pursuing before she met the Tecumseh?

A. Yes.

Q. You then after 8 o'clock followed that course due west until when?

A. Until the time we were seized by the Mayflower.

Q. On that course, did you pass the Havana entrance?

A. We did.

Q. How far, from your memory and from the memorandum you made at the time, can you swear you were from Havana
164 light when you passed it at 8.30? When I say swear I mean to allow, of course, for approximate estimates. I don't mean you t- swear to the minute or second or to the inch.

A. The position I have on my chart places the ship 17½ miles off Havana when we passed the light.

Q. Just at this point I remember a matter I had intended to ask you in regard to the clearances of this vessel. Captain Mackensie in his testimony stated it as a significant fact in this case that he found you with two sets of clearances, one for Vera Cruz and one for Kingston. Will you state, from your knowledge and experience as officer in the merchant service, what is the practise of vessels sailing from Cuban or British ports on the subject of clearances in that shape?

A. On this particular occasion I went to the custom-house officer to clear my ship——

Objected to witness going into this particular case. It is his experience as an officer.

Q. What is the usual practise in clearances?

A. I have been in one ship that had as much as 6 different clearances, and the last ship I was in invariably had 3. The last ship

was the Beta. I was in the ship 2 years, 9 months as chief officer and purser, and had charge of all the ship's papers.

Q. When you say more than one clearance, do you mean a clearance to more than one port or separate manifests and clearance papers given?

Q. Separate clearances and separate bills of lading for each port. That was the custom in the last ship I was in. It was a mail and passenger boat sailing out of Halifax.

Q. You have no other instance than in the Beta?

A. I have.

165 Q. Was there any war going on at the time?

A. No.

Q. You have known one ship to have had as many as 6?

A. I think we had about 6 in the Harlo, a mail and passenger ship, running from Halifax to ports in Newfoundland. At that time, which is about 2½ years ago, they used to have a separate clearance from every port they were going to.

Q. Did you give any particular instructions to the custom-house officer at Halifax with regard to the separate clearance papers?

A. I did not.

Q. Do you know of any one else having given such instructions to the custom-house officer?

A. I know of none.

Q. Where did you receive the clearance papers, and from whom?

A. In Halifax, from the custom-house officer; Mr. Fenerty was his name; he handed me the clearances and bills of health.

Q. And those clearances correspond with the terms indicated on the bills of lading?

A. I think so.

Q. Did you make any comment to the officer of the custom-house at the time? Did he hand you a separate manifest for Vera Cruz and a separate one for Kingston?

A. He did not.

Q. Did you regard it as singular?

A. No.

Q. Sis you take it as a matter of course?

A. I did.

Q. You have estimated in the testimony that the distance
166 from Havana light, at which you were captured, was 21 miles?

A. Yes.

Q. That is, you were north-northwest half west from Havana light, 21 miles?

A. Yes.

Q. How didyou estimate that to be the distance at which your ship was?

A. From the course I had been steering that should have been the position of my ship.

Q. You were sailing near 8 o'clock on a west course?

A. Just so; but I took the bearing of Havana light when it was dipping, just a little before 10 o'clock.

Q. Before the Mayflower fired her gun?
A. Yes.
Q. Or dropped her search-light?
A. Before.
Q. At that moment had you seen the Mayflower?
A. I had not up to that time.
Q. Had you seen any vessel in your wake?
A. No.
Q. Or on your port side?
A. No.
Q. Or starboard side?
A. No.
Q. At the time you made that observation it was before the Mayflower came up?
A. Yes.
Q. Just say how you made that observation and the calculation to satisfy yourself that it was 21 miles.
A. Havana light is a 21-mile light; it is visible 21 miles.
167 Q. By what authority?
A. The sailing directions for the West India islands, published by Norrie & Wilson, recognized all through England and the Dominion of Canada, as are all their diagrams and charts.
They say the light was erected on Morro castle. "On the east side of the entrance is a stone building 79 feet high with O'Donnell painted thereon. It shows a fixed light, varied by flashes every half minute, at 144 feet above the sea and visible 21 miles."
Q. Does it say anything of the elevation from which it is visible?
A. No; the usual elevation. The charts give the circle of illumination of all the lights. Their chart is made by the same authorities, Norrie & Wilson.
Q. I want you to say what that chart says with regard to Havana light, as to the elevation at which it is visible.
A. The circle of illumination on this chart has a radius of 21 miles; the circle of illumination gives the distance the light is visible.
Q. That is, the extreme distance?
A. Yes.
Q. How did you know it was the extreme distance? How did you judge of it being the extreme distance?
A. I took the bearings of the light when it was dipping, going out of sight.
Q. The last moment at which you would see it?
A. The last moment at which I would see it on the bridge.
Q. That is the highest point on the ship except from the masts?
A. Yes; 18 feet above the water level; that is the height of my eye when I am on the bridge.
Q. It was visible to you on the bridge further than it would
168 have been visible at 15 feet above the water level?
A. A little further.
Q. So you assume it was 21 miles off, a little before 10 o'clock?

A. I knew I was no nearer the light then 21 miles.
Q. What was the course at that time?
A. Steering the west course then.
Q. Having passed Havana?
A. Yes; the light bore then southeast by south half south 21 miles.
Q. Have you had the opportunity of reading over your testimony given *in preparatorio?*
A. I have.
Q. Are there any changes or additions or corrections that you would make to that testimony?
A. There is one place in it where I said I would have delivered my cargo in any port. I didn't mean by that that I would deliver it to any port in the world, but in any port in the waters of the four ports to which I was bound.
Q. What is the fastest rate of speed of which your ship is capable, everything being opened, all sails set, and a strong breeze?
A. Loaded, about 8½ knots.
Q. You consider that her utmost capacity?
A. Yes; that is about the fastest I have seen her go since I have been in her.
Q. Do you remember telling Lieut. Culver she had a capacity of nine knots?
A. I do not; I might have told him that.
Q. How could you have told him that if the utmost capacity was eight and one-half?
169 A. The ship could go faster when light than loaded.
Q. Faster with the current with her than against her?
A. Undoubtedly.
Q. If you told him that, would it or not have referred to the capacity of her engines to drive her without a load—if you told him that it would have referred to that?
A. To the highest rate of speed the ship was capable of. I don't know that the ship would go 9 knots.
Q. And you don't remember having told Lieut. Culver about 9 knots?
A. I don't remember; possibly I did.
Q. I only ask, if you did it, what you meant by it?
A. I don't remember if at all.
Q. What is your ordinary rate of speed? I don't mean on this particular voyage—the ordinary rate of speed on the ship?
A. It has been, since I have been on the ship, 7 to 8 knots.
Q. Then the average rate of speed at which you had been running before you met the Mayflower——
A. I had been running about 7½.
Q. From Crooked Island channel to the Mayflower?
A. No; I didn't make that much.
Q. Have you calculated the average you did make from your chart, locating her *per diem* course of the ship?
A. About 7⅓ knots average rate of speed maintained from Crooked Island channel until I met the Mayflower.

Q. If you were to push the ship to or above 8 knots an hour, what would be the natural effect?

A. She would consume a lot more coal. It would be hard on the machinery, and when the ship was loaded it would only be safe to do that in the very smoothest waters.

170 Q. Were you very flush of coal at that time?

A. No; the coal was getting short at that time.

Q. Before that time had you given any instructions to the engineer with regard to your rate of speed?

A. I had.

Q. What were they?

A. I told him to reduce the speed and save the coal.

Q. How is your calculation made to the run of the ship in point of miles every 24 hours?

A. Ordinarily get the distance from the log corrected by observations.

Q. What kind of observations?

A. Sun observations or star observations.

Q. If you were in sight of land could you correct it in that way?

A. Yes; correct it by land if in sight of the coast.

Q. Which of those ways of ascertaining the position and course of your ship did you use in making your record upon those charts?

A. I invariably used observations when I could get them—when the sun was not obscured. I would take the sight every morning at 8; I would take the meridian altitude at 12, and another chronometer sight about 4 in the afternoon, with occasionally a star or two at night.

Q. And land observations in the day?

A. When I was in sight of land I would take the bearing of the light-house or a well-known point of land to correct my position by.

Q. What kind of log is it which you take off the run of the ship by?

A. A patent log.

171 Q. What is that patent log and what does it contain?

A. It is an instrument for measuring the distance that the ship goes through the water.

Q. What has it inside of it?

A. Wheels something like the wheels of a clock.

Q. Has it anything which takes the impression from the water?

A. It is acted on by a fan—that is, at the stern of the vessel. As the fan revolves in the water the revolutions acting on this log are registered on the face of the log and the distance travelled.

Q. It has a dial?

A. Yes.

Q. How does it register?

A. The dial has a face like a clock, with three hands.

Q. Those hands are connected with the clock machinery inside?

A. Yes; one of the hands registers from a quarter of a mile up to a mile, the next hand registers up to 10 miles, while the third hand registers up to 100 miles—quarters, miles, and tens of miles.

Q. After it reaches 100 miles how do you get the registry from the log of the progress of the ship?

A. It goes back to one again; it starts back again at one.

Q. In taking down from the dial onto your chart or the ship's log the record made by the patent log you take down every revolution of the hand which records up to 100 miles; is that so?

A. I take just what is down on the log.

Q. You don't wait until it gets to 100 miles? How often do you take it off?

A. It depends on circumstances; 4 hours sometimes, 2 sometimes, and sometimes oftener. At sea I only take it 24 hours, as a rule, but the mate takes it every 4 hours.

172 Q. As a rule at sea, then, you don't run but 24 miles?

A. Oh, yes.

Q. I want to get exactly at how you distinguish between when one 100 is exhausted and the next 100 started.

A. You can always tell very nearly what the ship is going through the water, and it is not possible for a seafaring man to make a mistake of 100 miles in the speed.

Q. How did you get on the chart the figures you took from that log? Show the judge how you took them. On this chart I find 106 miles. I want to know from what that dates. If the dial only registers 100 miles, how did you put down 106 and know it is 106?

A. The last record on the log is 87, and when it was logged again it was found 6 miles—that is, it had passed the 100; take the difference between 87 miles and 100, it was passed the 100 and was on the 6 miles.

Q. On the next revolution?

A. Yes.

Q. Every 100 miles is a new starting point?

A. Yes; after it reaches 100 we go back again to one.

Q. From that record of the number of miles travelled by the ship how are you able to estimate between any two points on the chart the rate of the speed of the ship?

A. By dividing the distance travelled or sailed by the number of hours consumed.

Q. And that calculation, you say, is subject to correction by observation of the sun, stars, or the land?

A. Yes.

Q. Did you or not increase your speed between the time you met the Tecumseh and the time you were stopped by the Mayflower?

173 A. No.

Q. What speed was that from your calculations subsequently made?

A. It was 7 knots—nearly 7 knots—calculating the time we were stopped by the Tecumseh. We were stopped by the Tecumseh 20 minutes, which would give her a speed of a little over 7½ knots, on an average.

Q. What time, according to your calculation, was it you left the Tecumseh?

A. 6.30.

Q. From that time until 10 o'clock, running first one point north of west until 8 o'clock and then west from 8 o'clock to 10, how many miles were travelled by you?

A. 27½.

Q. What rate of speed does that show?

A. I have not figured that out exactly; about 7¾ knots an hour.

Q. Could you have traversed that distance at the rate of speed you were sure you were going before and after you met the Tecumseh? Could you have travelled that 27½ miles if you had diverged from a straight course?

A. The fact is I did diverge from a straight course. I steered west by north first.

Q. If you had diverged from two straight courses, one north by west and the other due west, between the point you left the Tecumseh and the point where you were arrested, could you have done it, in the speed of your vessel, in any other than straight lines?

A. A line is not absolutely a straight line. I couldn't have done it if steering all over the ocean.

Q. If dodging about or loitering or running away from the pursuer?

A. The ship could not have been in that position; not if
174 she had been dodging about, as you say.

Q. Is there anybody on board beside yourself who keeps the register of the speed of the vessel—not the time she was making in the water—I mean the speed of the engines?

A. The chief engineer keeps the speed of the engines.

Q. How does he keep it?

A. I don't know just how he keeps it. He takes the number of evolutions the engines are making. I don't know very much about that department.

Q. Were your lamps lit that night?

A. They were.

Q. And the night before?

A. They were.

Q. You will swear to that positively?

A. I will.

Q. The lights required by the Government regulations—that is, a light forward on the mast——

A. Masthead light and the two side lights.

Q. Is there any difference between the strength of one and the other?

A. The masthead light is visible at a distance of 5 miles; the side lights, two miles.

Q. Was there any other light on that ship that could have been seen nearer than 5 or 2 miles?

A. At the time of capture, do you mean?

Q. Before the time of capture?

A. The other lights burning on the ship that night—there was a light in my chart-room.

Q. Is that what Lieut. Culver calls your office?

175 A. No.

Q. Different from your office?

A. Yes.

Q. Is the chart-room above deck?

A. The chart-room is on deck, underneath the bridge, and has two doors, a door on each side, and a desk in there and a lamp; the lamp was lit about dark; I don't know the time it was lit; just an ordinary hanging lamp.

Q. Is it hanging up?

A. It stands in a bracket on the side; then there was another light in the after-house that was burning, the light in the lantern hanging from a hook and I don't know whether any other lights were lit on the ship; those are the only lights that I know of.

Q. Distinguish between your chart-room and the other place which you say there was a light hanging.

A. I presume Lieut. Culver, when he said my office, meant the after cabin, which is under deck.

Q. Under the deck?

A. Yes.

Q. Is that light in that visible outside?

A. No; it would not be visible unless the door of my room was open; then it would be from the ports in my room.

Q. One or two doors in your room?

A. One.

Q. Any steps leading down?

A. The steps leading down from the deck to the after cabin; my room is off the after cabin.

Q. You say two doors to that room?

A. Two doors to the house on deck.

176 Q. If they were open at a certain angle, a lantern that hung there would be visible outside?

A. The light that hangs in there, that house, would be visible between the bearing 4½ points and 5 abaft the beam and only between those bearings on each side.

Q. That would be only half a point?

A. Three-quarters of a point.

Q. It would be visible through the door on the port and starboard side at those bearings?

A. Yes; between those bearings.

Q. State your conversation with Capt. Mackensie and your recollection of it when you were arrested.

A. When I went on board the Mayflower, after being introduced to Capt. Mackensie, he told me that he was going to send me in. I asked for—he invited me down in his cabin, and he told me that I had been changing my course. I told him I had not changed my course since 8 o'clock. He said, A very strange thing; he couldn't account for it if I was not changing my course. He then asked the speed of the ship, and I told him 8 knots, when he said, I don't be-

lieve you, because we have been chasing you now for nearly two hours, and my ship was going all the way from 11 to 16 knots, and he says, It was not possible unless you are making more than 8 knots. I told him he couldn't have been steering a straight course if he had been chasing us that time at that speed. He said it was very hard for him to believe; he should say the ship was nearer 18 than 8. I told him it was simply an impossibility. I forget all the conversation we had. He asked some one present there what they had about the Newfoundland, and a letter was brought, and he said to me, I have here information given by or through the
177 United States consul at Halifax that you left Halifax to run the blockade. Now, he says, if it was not for that I would let you go, but I will have to send you in. It is better for me to err on the right instead of the wrong. If the United States Government makes a mistake they will have to put up with the consequences; I cannot afford it, and I will have to send you in. I said, If I was in your position I would do the same thing; I can't blame you for sending the ship in. That is as near as I can recollect the conversation.

Q. What did you know of the Cuban blockade before you left Halifax?

A. I asked Musgrave & Co. to give me a list of the blockaded ports in Cuba. He said he would. When I went for my papers he handed me a map and told me the lines on the map represented the ports which the Cuban government had notice was blockaded. He also told me, which I very well knew, that Guantanamo and Santiago were blockaded, although no such notice had been given to the government of such blockade. I gave the map to the prize commissioners.

Q. Is this the map?

A. Yes.

Q. Was Caybarien one of the ports marked as blockaded on this map?

A. No.

Q. Sagua la Grande?

A. No.

Q. Havana?

A. Yes; Havana was blockaded.

Q. I suppose it is *l*igitimate for me to ask the question, as we are on the question of intention, if you had been allowed the choice of selecting a port for running the blockade in Cuba, from your knowledge of the condition of things there, would you have selected
178 Havana?

A. No; I think Havana is about the last place I would have selected to run, if I had been intending to run the blockade.

Q. When Capt. Mackensie captured you, then you were heading for Havana?

A. No; I was heading at the time the gun fired—I was heading west.

Q. For or away from Havana?

A. Away from Havana. Although not directly away, I had

passed, and this course was carrying me further from Havana and further from the coast of Cuba.

Q. What is your recollection of the time of sunset on the evening of July 19th?

A. On the 19th the sun set 6 hours and 37 minutes at Havana.

Q. After the sun set, how long was it before dark?

A. Not more than 30 or 40 minutes; half an hour or 40 minutes. Twilight was very short down there.

Q. If there is any point I have failed to ask you and upon which you desire to give your testimony, I beg you will now speak out, as the examination in reply is only what the cross-examination brings out.

A. I don't know of anything.

Cross-examination by the DISTRICT ATTORNEY:

Q. Of what country are you a native?

A. Nova Scotia.

Q. How long have you been engaged in the service at sea?

A. 18 years.

Q. And in what capacity have you been serving during that time, and where?

A. I have been serving in almost every capacity you can
179 mention—from before the mast, or boy on board the ship, up to master, and I have been nearly all over the world.

Q. Are you or not well acquainted with the West Indian waters?

A. Parts of the West Indian waters I am very well acquainted with.

Q. What parts?

A. Through the Windward passage and around the island of Jamaica and along the coast of Hayti.

Q. How about the coast of Cuba?

A. I have been to Guantanamo once and Cardenas once and Havana once, and those are the only three voyages I have made to the island of Cuba.

Q. How long have you been sailing as master on a ship?

A. I think about 6 years; I don't remember exactly.

Q. And as such have you been engaged in foreign trade—that is, trade between ports foreign to each other?

A. As master, until this previous voyage, I have been trading between Canada and Great Britain.

Q. Then you have never made but one trip to any other than a British possession, as master?

A. Yes; I have. I was master of a barkentine out on a voyage to the River Platte.

Q. You said, on the ships that you sailed on it was customary to have separate clearances for the different ports to which they had good- consigned?

A. Yes.

Q. Was it customary on any of those ships where there were goods consigned and clearances to have verbal instructions to enter

and discharge a cargo at any port other than those mentioned in the manifest and clearances?

180 A. The ships I had reference to were both mail boats. Both received subsidies from the Canadian government, and they had to go to certain ports; they had contracted with the government and had to fulfil that contract. They could not go to outside ports.

Q. Don't you know, as a matter of fact, as a seafaring man, that it is necessary for you to have written authority, when you enter a foreign port, to show your right to enter and discharge cargo, from the owners of it?

A. No; I don't know that to be the case.

Q. Then you would say it was safe for you as master, with clearances from one country—with manifests and bills of lading to that port—it would be safe for you as master to go into the ports of another country to which you had no clearances and offer that cargo for sale?

A. I did not say to offer it for sale. I said it would be safe to go in if it was the instructions of my owners to do so. That was the meaning I intended to convey.

Q. You never before in your experience had instructions to go and deliver cargo at any other port than those for which you had clearances?

A. No; I never did.

Q. This was the first time?

A. Yes.

Q. You knew that there was a war going on at the time you left Halifax between Spain and the United States?

A. I did.

Q. You knew there was a blockading force in the Cuban waters?

A. I did.

Q. And when you were boarded by these U. S. ships you

181 were asked where you were going?

A. I was.

Q. Did you tell them your real destination was a Cuban port?

A. I did not.

Q. What was your object in deceiving these officers from the U. S. vessels?

A. I didn't do it with intention to deceive; under the circumstances, my destination was not a Cuban port.

Q. But you have sworn positively the real destination was a Cuban port.

A. If those ports were open.

Q. And your information was they were not.

A. My information was from Lieut. Titus, of the Badger, that the whole island of Cuba was blockaded, as I have stated.

Q. When he asked you your destination, you hadn't then—when her officers came aboard you had not then received any information that the whole island was blockaded?

A. I am not positive.

Q. Was not that the first time?

A. I am not positive whether he told me before or after he had examined the ship's papers.

Q. I mean before you met him, had you any information to that effect?

A. None whatever.

Q. You didn't give him any information as to the real destination of the vessel on leaving Halifax?

A. I did not.

Q. And now, as I understand, your instructions, which you felt bound to obey, were to go to Sagua or Caybarien and enter
182 those ports, if not blockaded; if blockaded, to go to Kingston, Jamaica, and there telegraph to the owners for instructions.

A. Those were my instructions; I was at liberty to go to Vera Cruz as well.

Q. You didn't say anything about the liberty of going there in the direct examination; you said to go to these ports, if not blockaded, or, if blockaded, to go to Kingston and telegraph.

A. Those were my instructions, and when I got to Kingston I was to cable for instructions.

Q. Why didn't you obey those instructions?

A. I did, as far as my judgment goes.

Q. Was it your judgment—you were told of this off Neuvitas, that you couldn't make either of these ports that you were bound for. Is it not several hundred miles nearer to Kingston around Cape Maysi from the point of Neuvitas than it is to go around, the way you were heading?

A. It is undoubtedly; but I was going, when I met the Badger, on the west course. If after the Badger left me I had turned round and gone in an easterly course I considered I would be submitting myself to unnecessary suspicion.

Q. Otherwise it would expose your secret instructions to the officers of the Badger?

A. No; I didn't say that, and I don't mean that; I meant what I said. To meet a war ship going on a course and after meeting it to turn round and take another would be a matter of suspicion.

Q. Would it have been a matter of suspicion to tell the instructions when you found out about those ports and to turn round?

A. I don't know. A person placed in the position I was perhaps does not always do what he would do afterwards. I had
183 another reason; I wished to pass those ports; although I felt they were blockaded, I wished to satisfy the owners. There is a clause in the charter which says the master is liable to be dismissed by the charterers if he does not satisfy the charterers. I wanted to satisfy my charterers that those ports were blockaded.

Q. You never did tell any of these officers who boarded you that you had any other destination than that mentioned in the ship's papers?

A. I did not, for after I passed the Badger I had no other destination except what was mentioned in the ship's papers. I considered that my instructions were cancelled in regard to those ports

when the Badger told me they were blockaded, and I acted accordingly.

Q. Then you desire to change what you said a few minutes ago, that you wanted further evidence than what they gave and you went on past those ports to see?

A. I said I wanted to satisfy my charterers, although I was perfectly satisfied in my own mind, but by passing those ports on the log that would be evidence to satisfy them; I didn't want further evidence for myself.

Q. After you had passed the port of Sagua was it not 240 miles nearer to Kingston to go back than to continue on a west course?

A. Yes; about 200 miles shorter.

Q. And you were getting short of coal?

A. I had plenty of coal to get to Kingston. I didn't have enough to go to Vera Cruz and then Kingston.

Q. You were going to Kingston; that was your destination—where you were instructed to go?

A. From the way things turned out, Kingston was my real destination; had I turned around after I passed Sagua I would
184 have been as bad in that shape as before; I would have had to go east.

Q. As a matter of fact, would you have been injured in any way except that you would have to tell the commander of the boat your real intentions, what they had been from the start?

A. I don't know; probably if I had told them my cargo was destined for Cuba, no doubt they would have seized the ship.

Q. And it was for that reason that that fact was concealed?

A. To avoid suspicion, as I have already stated.

Q. That, you understood, was the reason that actuated the charterers and owners in their instructions to you at Halifax?

A. I don't know anything about those people at all. I received the instructions and did the best I could to carry them out.

Q. You have been a seafaring man and the commander of a vessel for the past 6 years, thought this was a first starting out on such a voyage as that, with papers to one port and verbal instructions to another?

A. Yes; I have already said so.

Q. Didn't that strike you as being rather an extraordinary voyage you were expected to make?

A. I can't say that it did. I didn't consider anything extraordinary about it. I just looked on it as though if I got to Cuba, if the ports were open, I was to go in, and if not, I was not. I didn't think anything extraordinary about it at all.

Q. You thought you were going on rather a risky voyage?

A. No; I didn't consider I was running any risk at all.

Q. Or your vessel?

A. I did not.

Q. You knew the charter-party recorded rather an extraordinary position there in regard to insurance?

185 A. I don't know about extraordinary. What do you mean by that?

Q. In certain limits the written class required the charterers to insure her for full value against seizure. Did you ever sail under a vessel having a charter-party like that before?

A. No; I never sailed in charge of a vessel in waters where two nations were at war. I didn't consider anything unusual, considering Spain and the United States were at war.

Q. You knew they did not interfere with legitimate vessels who were in trade?

A. In fact, I believe now to the contrary. My ship is a neutral ship and was seized by the Mayflower, and she was engaged in a neutral trade as well.

Q. You say these instructions were given to you or read to you—a letter from Robinson & Co. to Capt. Farquhar?

A. The Captain handed me the letter and I read it.

Q. Was it a letter written to Capt. Farquhar, addressed to him?

A. I think it was. It was not addressed to me; I know that. I think, as Captain Farquhar had charge of the ship on the previous voyage—I think probably he received the letter before I joined the ship. I know the letter didn't come to me and it was not addressed to me.

Q. And you don't know what has become of that letter?

A. I don't know.

Q. You say that you saw this ship, the Hudson, before they signalled you, I believe?

A. I saw the Badger, Hudson, and the Tecumseh long before they signalled me.

Q. Which was the first vessel that boarded you at night?

A. The Badger.

Q. You saw her, you say, before she threw the flash-light on you?

186 A. I did.

Q. And in what position was she to you when you first saw her—how did she bear?

A. About a point and a half on the starboard bow when I first saw her.

Q. Is that nearly abeam?

A. No; quite near the bow.

Q. Then your running lights were plainly visible to her at that time?

A. Yes; they should have been—yes; our lights were visible to her when I first saw her.

Q. The running lights, as I understand, only show after they get forward two points abaft the beam?

A. From right ahead to two points abaft the beam on each side.

Q. Now, what sort of lights—you say you had the ordinary lights—such as ships of that character carry?

A. Yes; lights approved by the board of trade.

Q. And by the law of the country where you sailed from they are required to show side lights, at least two, and masthead lights at least five miles at sea?

A. Yes.

Q. Now, as a matter of fact, the lights you had there would show until they dipped below the horizon of the sea?

A. No; they wouldn't.

Q. How far would they show?

A. I am not sure that they would show, the masthead further than 5 and the side lights 2.

187 Q. A side light, wouldn't it be at two miles, on an ordinary ship and the masthead at 10?

A. It would not; it dips at 10 miles.

Q. Not from the deck of an ordinary ship. How high above the water is your masthead light?

A. I don't know; I never measured it, but I dare say I can give an idea. The light-ship, as I understand, is seven miles from Charleston. Standing on the bridge of the Newfoundland at high water, I can see the hull of the light-ship. That will give you an idea as to the distance.

Q. You said when you passed the port of Havana you saw a vessel inshore of you?

A. Before I passed; not at the time; it was dark when I passed.

Q. After you had left the Tecumseh?

A. Yes.

Q. You saw the ship inshore of you?

A. Yes; she was hulled down inshore of me. It was just dark. She was steering to the northeastward. I don't know what ship it was. She had two masts.

Q. How far did you make her out to be from you?

A. I judged the ship was 8 miles inshore of us at that time; possibly more, but at least 8 miles.

Q. When you were boarded by these various ships—by officers from them—did you show to any of them this charter-party you were sailing under?

A. No; I did not; I didn't consider it was necessary; none of them asked for it. I did not consider it as one, and do not yet, as one of the ship's papers, except for my own guidance. It was a copy given me for my own guidance. It is not a paper like

188 a clearance or manifest or bill of lading. It is not an official paper in any respect.

Q. You say when you passed Sagua and Caybarien that you saw no evidence as to either one of them being blockaded?

A. I did not in passing either of those ports. I never saw a ship.

Q. As your instructions were to enter them if they were not blockaded, why didn't you enter the ports if when you passed them you found they were not blockaded?

A. I didn't say I found they were not blockaded. I said I accepted the statement of the officer of the Badger in regard to the ports being blockaded. I did not see any of the blockading squadron. I had no intention of going into those ports when I passed them. I had abandoned all intention of going to either of those ports.

Q. You produced two charts that you referred to. Did you have both those charts on your chart-board when you were captured?

A. No; not when I was captured. I had this chart, which is a chart of the island of Cuba, on the desk.

Q. That is the one on the desk?

A. Yes; but when the prize master came on board, as we could not shape the course from this chart, I took a general chart of the West Indies and we used it as far as we went.

Q. He saw this small chart of the island of Cuba? He looked at it?

A. I don't know that he looked at it. He slept in the chart-room, and all the charts were in the chart-room. I never moved them out.

Q. When he went aboard were those charts in the same position as to marks as they are now?

A. No.

Q. In what respect are they changed since?

A. The chart of Cuba, the lines have been drawn connect-
189 ing the position and also the lines bearing from Havana light. I have drawn those since.

Q. Were those points, all of them, on the chart at the time when he went on board?

A. I am not sure about all of them; there are some points here not on the chart that I have put on since; they have reference to the position.

Q. You say you put them on. They were put on?

A. I put them on—all the marks on that chart, I believe, I put on; there is one on the other chart the mate put on; taking the bearing of the light-house, he was posting her; I was asleep; but only one on that chart. I put them all on.

Q. How long before you were captured did you say you had taken your bearings from Morro light?

A. I should say about 5 minutes after I put the ship's position on the chart, for I had just come out of the chart-room when the second mate, on watch, told me there was a light astern. I saw it was a search-light; went on the bridge, rang stand by, and not two minutes after the Mayflower fired the gun. I rang stop, and the engine stopped, and it was not more than 5 minutes from the time I put the ship's position on the chart until the Mayflower fired the gun.

Q. And Havana light was then dipping?

A. It had dipped then, when I went on the bridge. When I was waiting for the Mayflower I had to stand on the seat of the bridge to see it. I could not see it from the bridge; it had passed beyond the circle of illumination.

Q. Did you navigate the Newfoundland from the point of seizure to Charleston?

190 A. I did.

Q. Did you make a good passage and a good landfall at Charleston?

A. I did.

Q. Did you make any notes on your chart from the point of seizure to Charleston?

A. I did; that is marked on this chart of the West Indies, as far north as it goes; the positions are marked there from time to time.

Q. During your passage did you have a memorandum book or note book upon which you took the readings before you put them down?

A. I used the same blank book I always use, the blank book for figuring in.

Q. Tell us from what point you took your departure to make the port of Charleston.

A. We had a dispute about that. Mr. Pratt said we were 17 miles out; I said 21; so we agreed between the two to split the difference.

Q. And in splitting the difference it brought you right?

A. No; it did not. I found the next day that the ship was about 20 miles from where she should have been.

Q. 20 miles in what direction?

A. Eastward.

Q. Did you make any calculations in your sailing? I don't know the terms for the current. How many hours were you making the run from the point of seizure to Charleston?

A. I think about 61 hours.

Q. And how many miles do you call it?

A. About 600 miles.

Q. That is the rate of 10 miles an hour?

A. Very nearly.

191 Q. Did you make any better time on that trip than the ship had been making on the outward voyage?

A. The ship didn't go any faster. She had all the way from one to four knots current with her; on an average of 1½ to 2 knots current from the time of leaving Havana to Charleston. We came up in the strongest part of the Gulf stream.

Q. Do you mean to be understood to say that the average current from the point of seizure to Charleston is 2 knots?

A. That is the average as we experienced it.

Q. Referring to the conversation with Capt. Mackensie, didn't he say to you he would not have sent you in unless he believed you were trying to run the blockade of Havana, and if he was mistaken you must seek redress from the United States?

A. I don't know that Capt. Mackensie told me that; I don't know about the language.

Q. That is the substance?

A. Capt. Mackensie told me if it was not from information contained from what he had in his hand he would not send me in; he would let me go if it was not for that, holding whatever it was in his hand. I would let you go. He might have said that. If Capt. Mackensie said he said it, I don't doubt his word.

Q. Did you take as your departure from the point of seizure for Charleston Morro light south-southeast 18 miles?

A. Yes; south-southeast half east 18 miles is the departure we took.

In Reply.

Q. Did you suggest or calculate or make that position, or did you accept it from somebody else?

A. I was in a position where I had to except it.

192 Q. Who gave it to you?

A. The prize master in charge of the ship.

Q. That is his work, not yours?

A. It is mine as well as his.

Q. Did you accept it without making any separate calculation of your own?

A. I did; I did not make any separate calculation.

Q. Who made the calculation?

A. Mr. Pratt and I.

Q. Between the time of capture and point of departure, how long a time was that?

A. Nearly 3 hours.

Q. Who told you the current there was a knot an hour?

A. I think the boarding officer from the Tecumseh.

Q. At 3 hours, at the rate of a mile an hour, it would put you to the eastward three miles?

A. If the current was running that fast and in that direction, it would have put us that.

Q. Those points which have been placed on the chart since your capture, what were they taken from? You said some of those positions of your ship noted on the chart had not been there before.

A. All the positions of the ship that are on that chart of Cuba were noted at the time of the capture; there are other lines I have drawn since.

Q. The positions were previous to the capture?

A. Yes.

Q. And the last position, 5 minutes before, was put down by you on that chart at that time?

A. It was.

193 By the COURT:

Q. I understand you had instructions from your owners to deliver that cargo at Sagua or Caybarien; at Caybarien a pilot was to meet you; that you were notified before leaving Halifax that those ports were not blockaded (as a matter of fact they were not blockaded; no official notification at that time or since), and the Government can hold that you were within your right entirely as a neutral in taking your cargo into Sagua. It appears from your testimony today, starting out with an intention of going to Sagua, you passed that port so near that you saw it was not blockaded. Why did you not enter it, if that was your intention?

A. The reason I didn't enter or try to enter was I was told they were blockaded. That is my reason.

Q. You saw that they were not blockaded?

A. No; I didn't see that they were not blockaded at the time. I didn't see any ships off Caybarien or Sagua.

Q. Don't you know that it requires ships to enforce a blockade?

A. I don't think any ships were at Caybarien. I don't know about Sagua; it was in the night when I passed Sagua.

Q. If you can give any explanation, I would like to have it.

A. That is the only explanation.

Q. The ship is charged with a grave offense and subject to forfeiture, and if there is any explanation further than that you have given—we must say the circumstances look very suspicious.

By Mr. BARKER: I asked this witness if he did not say after he was told by Lieut. Titus, of the Badger, that the ports of Caybarien and Sagua, to which he was bound under his instructions, were, with all the rest of the ports of Cuba, blockaded; if he had
194 not then abandoned his intention of going into Sagua or Caybarien. I also asked him if he did not say in his examination that, notwithstanding his having abandoned that intention, he determined it was proper for him, in view of the charterers of the charty party and owners, that he should pass those ports for the purpose of saying that he had passed the ports and seen they were blockaded. Therefore for that reason he was on a westerly course, and with the additional reason he felt at that time if he turned back he would expose himself to needless suspicion. Those are the reasons he gave for having pursued his westerly course and not having gone into Sagua or Caybarien; that he was informed from officers of the United States, and, although he saw no blockading vessels there, he did not go in, and, although he had determined at that time not to go in, he nevertheless, in order to be able to report to his instructors and owners of the cargo, he felt it incumbent upon him to go past those ports.

By the COURT: The court will inform the counsel why he asked that question. It is this: There are some circumstances connected with the conduct of the ship on the night of the capture tending to show an intention to enter the port of Havana. As to the weight of those suspicions, the court has not reached any conclusion, but there are some circumstances tending to show that intention. Everything that goes to show why this ship was off Havana at that time, every circumstance tending to account for his presence there, is pertinent to that inquiry. Now, he has not explained to the satisfaction of the court as yet—to its full satisfaction—why he was passing Havana that night, why he was passing there at all, why he was about the port of Havana that night. If the testi-
195 mony of the Government is to be believed at all, that he passed the Tecumseh at the time stated, there is an interval of time to be accounted for. The case for the Government is that during that interval of time he was lurking about to see if he could enter Havana. If he honestly intended when he sailed to enter the port of Sagua, which he could lawfully have done, that would rebut the idea that he started for the port of Havana; but if he had no intention at any time to enter the port of Sagua, then the court

might believe that his secret instructions when he left Halifax were not to go to Sagua, but Havana. If those were his secret instructions, any lurking about that port, any delay upon his voyage westward, would indicate he was waiting for an opportunity to enter the port of Havana. That is in the mind of the court and requires explanation.

By Mr. BARKER: We have nothing to offer beyond what has been stated as to his reason for not going into Sagua or Caybarien, but that he accepted the statement of Mr. Titus that those ports were blockaded. We have nothing to offer as to his going past those ports except that which has been testified to. He felt, notwithstanding the information of the United States officer, it was incumbent on him to satisfy his principals; that he should pass those ports and see for himself and be able to report that he had gone by. Having got to those ports, he then pursued his westerly course for the reasons he has given in his testimony, because he did not feel that it would be right for him to expose himself to unnecessary suspicion by reversing his course and going back upon it. It was safest for him, being exposed to arrest, to go on a west course and not expose himself to unnecessary suspicion; therefore he pursued his course, after passing Sagua and Caybarien, going west.

196 Those are all we have to say, as I understand Captain Malcolm. If he has anything else to say to the court, I beg that he be allowed to say it.

By the COURT: That is not an explanation that satisfactorily explains. Having reached that point off Neuvitas when, according to his statement, he was on his way to a port where he was free to go, having reached that point and being informed to his own satisfaction that he could not reach the port where it was l-wful for him to go, then why did he go around the whole island of Cuba in order to reach Kingston, when he could have gone around Cape Maysi, if that was his real destination? I cannot understand it. The explanation he gives does not satisfy me, and it tends therefore to give color to the suspicion that he was loitering around Havana for the purpose of entering.

By Mr. BARKER: He stated that he felt under obligations to his principals to go past those ports, so as to be able to report that he passed them. That is all I can offer.

By the COURT: Would he not have laid himself open to a graver suspicion, assuming that his destination was Kingston, if he had pursued the westerly course around the whole island of Cuba?

By Mr. BARKER: If the sole purpose of his life was to avoid suspicion, it was.

Q. Can you give any other or better explanation of your reason for not turning back after meeting the Badger and pursuing your westerly course?

A. No; I have no other explanation than I have already stated. I said I wanted to satisfy the minds of the charterers, as my

197 position is in a measure dependent on them, according to the terms of the charter-party. I was told that Sagua and Caybarien were blockaded, and I accepted that as if the notice was

from the Government. I accepted it and never questioned it, as far as I myself was concerned.

198 *Captain Malcolm Continued.*

CHARLESTON, *September* 2, 1898.

Captain MALCOLM recalled.

By Mr. BARKER:

Q. What is the number of your crew?
A. 22.
Q. What is the number of the watch?
A. 8, or 9 when I am on deck myself.
Q. 9 when you are on deck?
A. That includes the engineer department and the deck department.
Q. Was the mate on deck the night the gun was fired?
A. Not when the gun was fired?
Q. Was he there afterwards?
A. He was. I sent for him to get his log book for the boarding officer.
Q. He was there when the boarding officer came up to the ship?
A. Yes; he was on deck when the boarding officer came on board.
Q. Were any of the engineer's men on board at that time?
A. I don't know. I did not take notice.
Q. One other question. Did you have any other instructions whatever than those you have testified to here?
A. I had no other instructions than what I have already sworn to, from any one.

Cross examination by the DISTRICT ATTORNEY:

Q. In regard to these instructions, did you expect when you arrived at either of these ports—Caybarien or Sagua—to find there original bills of lading awaiting you?
A. I expected to find an order from Robinson & Co., the shippers of the cargo.
199 Q. That they would have parties there; would have the original bills of lading sent on?
A. I don't know about that. My instructions were, in that respect, to deliver the cargo to the order of the shippers, Robinson & Co., Montreal; that is what I expected to find.
Q. You expected to find a pilot watching out for you, and lighters ready to unload the cargo?
A. I did, from those instructions.
Q. And that your instructions were to unload as quickly as possible, working day and night if necessary?
A. Yes.
Q. I see one of these bills of lading is endorsed in blank David Robinson & Co.; the others appeared to have been endorsed and the endorsements erased with blue pencil.
Q. I think I can account for that. I got the bills of lading at the

office of Musgrave & Co., and I signed them all together, and Musgrave & Co.'s clerk gave me two bills of lading; those are the two that he gave me; probably it was intended to give me the two that were marked out. I don't know as to their intention; I only know those were the ones I got. That may have been the way I got the bills of lading that were not intended to be given to me.

Q. Do you know anything about the railroad connections from the ports of Caybarien and Sagua?

A. I don't know anything about the railroad connections in Cuba whatever.

Q. In your charts there that you have, are you acquainted with the lines on them, the lines that represent the railroads on the land?

A. I have never examined the charts in that respect. I
200 know as a rule railroads are generally marked on the charts.

Q. Did you notice on the charts those black lines?

A. I see the railroads are marked here on the chart.

Q. Look at that; are there any railroads marked running into Sagua and Caybarien?

A. Yes; to both places.

Q. And do those railroads connect there with the railroad system running to Havana?

A. They do.

In Reply.

Q. You say you see them on the map now?

A. I do.

Q. Did you ever take notice of them before, particularly?

A. I have probably noticed them before, but paid no particular attention to them.

Q. You were not running a railroad?

A. No.

Q. How long have you had those charts?

A. Both these charts I bought in Halifax in July.

Q. You spoke of them as your private property?

A. I bought the charts and paid for them out of my own money. It is customary in that class of ships for the master to find all the charts, and also all the instruments of navigation.

Q. On your previous vessels have you been in the custom of finding the charts?

A. In the last ship she found her own charts; she was a different class of ship from this.

201 Q. How many bills of lading did you sign in Musgrave's office?

A. Six.

Q. And of those how many were given to you?

A. Two.

Testimony of Albert Salkus on Final Hearing.

ALBERT SALKUS sworn.

By Mr. BARKER:

Q. What is your position?
A. Chief mate—first officer of the Newfoundland.
Q. How long have you held that position?
A. 3 years on the Newfoundland.
Q. How long have you been on that ship before?
A. I was in that ship when the Allens had her—since 1875—before any talk of Capt. Farquhar.
Q. Did you keep the log from Havana to Charleston?
A. Yes.
Q. Is that the log as you kept it (indicating)?
A. Yes.
Q. When were those entries made?
A. As they happened—every 4 hours; every 4 hours I went below.
Q. According to that log, how many miles apparently had the ship gone from off Havana to when you sighted Charleston light?
A. 476 miles.
Q. The real distance is how much?
A. 600.
Q. That shows what?
A. A strong current in the Gulf stream; 124 miles of current setting with the ship I have to account for.
202 Q. How many days?
A. 61 hours. We started from there at 12.45, when we left, and we hauled the log in at 2 p. m., at the light-ship.
Q. How many miles does the log show?
A. 476 miles.
Q. Reckoning on the speed of the ship as 8 knots and allowing 2 knots for current, what would that make the actual speed?
A. The actual speed, 610 miles.
Q. I want the speed; how much an hour?
A. Barely 8 miles.
Q. Did you keep the log of the ship from Halifax to the point where you were captured, off Havana?
A. Yes.
Q. In that log you have stated that in passing Havana entrance you were 10 miles off shore.
A. Yes.
Q. How did you arrive at 10 miles?
A. We didn't get no 4-point bearings of the light before; we didn't see the light until a point before the beam; too far off. I just took a rough calculation and gave the ship the benefit of the doubt. We didn't have no correct bearings, and it is safer to give the ship the benefit of the doubt.
Q. You made no calculation?
A. No; guessed at it in going below?

Q. And you put it down, giving the ship the benefit of the doubt?

A. Yes; we didn't take any correct bearings.

Q. Why did you think it was more than 10 miles off?

203 A. By the distance the light showed. When I saw the light it was a point before the beam, bearing west by south.

Q. What course were you running that time?

A. West.

Q. Had you varied the course on that watch?

A. From 6 to 8 we did. At 8 o'clock we steered west. We had been steering west by north before that.

Q. What was the course of the ship when you met the Tecumseh?

A. West, I think.

Q. You met her to the eastward of Havana light?

A. Yes.

Q. What time of evening on the 19th did you meet the Tecumseh?

A. 10 minutes after 6 we were stopped and the Tecumseh came alongside of us.

Q. How did you arrive at that time?

A. I was on deck; my watch was on deck from 6 to 8, and the watch had been relieved 10 minutes before that.

Q. Was that the time?

A. That she stopped us. I know it was after 6.

Q. How long were you detained?

A. About 20 minutes.

Q. When you started on your course again after leaving the Tecumseh, according to your recollection, it was half past 6?

A. Yes.

Q. How long did you run on that west-by-north course?

A. From that time till 8; an hour and a half.

Q. How far were you from Havana light when the Tecumseh met you?

A. We couldn't see Havana light-house; we couldn't see the castle.

204 Q. What time was sunset?

A. 6.37 or 6.38.

Q. What kind of night was the 19th of July?

A. Clear night, dark, light easterly winds.

Q. Did you between 8 and 10 o'clock see any vessel following you?

A. I went below at half past 8.

Q. Up to that time, had you seen anything following you?

A. Not around there; not that night; only the Tecumseh; she kept in sight about half an hour or 20 minutes.

Q. Were the regulation lights on the ship burning at that time?

A. Yes; they were put out at sunset.

Q. What other lights were burning?

A. The usual other lights, the light in the chart-room and the light in the after-house.

Q. Was the light in the chart-room visible to an outsider?

A. It is visible in a certain point.
Q. Was the light in the after-house visible?
A. At a certain point ¾ of a point of the compass.
Q. How was the after light visible?
A. Through the doors on the after part of the house.
Q. A door on the port and starboard side?
A. Yes.
Q. What is the length of that house?
A. 10 ft.
Q. How far from the forward part of the after-house was the lantern?
A. 2 ft. from the forward part.
Q. And how far and towards where are the doors in that after-house?
205 A. Right against the after end.
Q. What are the width of the doors?
A. 2 ft.
Q. So that would be 2 ft. to take off for the doors and 2 ft. for the distance of the lantern, and that would be 6 ft. from the lantern to the nearest opening?
A. Yes.
Q. And it is through those openings only that lantern would be seen?
A. Yes.
Q. Have you made those measurements of the after-house since you have been here?
A. Yes.
Q. Have you taken the bearings from the light?
A. Yes; so as to say at w*a*ht point of compass that light would be visible. It is 4 points a quarter abaft the beam before the light is visible, and it is only open to ¾ of a point of the compass.
Q. The same on the starboard side?
A. Yes; the light is hanging right in the middle of the house.
Q. And you swear that that vessel did not depart from her west course except when she was running from half past 6 to 8 on the west-by-north course, and after that, until you went down below, half past 8, she was still running a straight west course?
A. I will swear to that.
Q. Will you swear that those lights you have mentioned on the ship were burning all that time?
A. Yes; I will swear it. We generally look at the lights every half hour.
206 Q. Where were you when the gun was fired?
A. Down below in my bunk.
Q. What carried you up?
A. I heard the gun and I came up.
Q. Did it take you long to come up?
A. No.
Q. Were you dressed?
A. In summer weather we don't wear much clothes; we don't wear no clothes in this climate.

Q. Were you all in dress parade?
A. Oh, no; we are always dressed ready for muster.
Q. What is the number of men on watch regularly?
A. 8; and when the captain is on deck, 9.
Q. When you and the captain both are on deck it makes 9?
A. Yes.
Q. You have stated when the Tecumseh came up; how do you know the time when the Tecumseh came up to you?
A. Because I know the watch had been relieved about 10 minutes before she came up, and the watch was relieved at 6, and this was 10 minutes after the watch had been relieved; no more than 10 minutes.
Q. In what direction was the Tecumseh from you?
A. On our port quarter, about southeast of us, running about a northwest direction when she came up to us.
Q. She was running in a northeast direction when she came up?
A. That was about the position she was running, coming up towards us; she was running in about a northwest direction.
Q. I don't mean when she came up to you; when you saw
207 her she was southeast of you, bearing about northeast of you?
A. Yes; bearing about northeast; she was about north-northeast.
Q. How long after you saw her before she came to you?
A. About half an hour.
Q. During that time you- ship was moving to the westward on her west course?
A. Yes.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been following the sea?
A. 36 years.
Q. Have you made the trip to Havana before?
A. No.
Q. What West Indian ports have you made?
A. I have been round Porto Rico and Guantanamo and Santiago; that is about 25 years ago.
Q. How old are you?
A. Near 50.
Q. How did you get your position at the time the Tecumseh boarded you—the position of the ship relative to the land?
A. About 13 or 14 miles off from land; right square off the nearest point of land.
Q. And how far were you from Morro light?
A. Couldn't see the light-house then, not with the glasses. Without the glasses we couldn't see it at all, and we couldn't see it with the glasses.
Q. Do you know how far that light-house can be seen in daylight?
A. I don't know how far in the daytime. I imagine very
208 nearly as far in the daytime as night.
Q. I understood you to say you didn't notice the light-house

when you passed Havana on a direct north-and-south line drawn through Morro. You didn't notice when you passed?

A. I didn't say that.

Q. I understood you to say you didn't notice when you passed that point.

A. I didn't say that point. I said we were abreast of the light at 8.30; the light bore south at 8.30.

Q. And how far off did you make the light to be then?

A. 15 or 16 miles by my calculation.

Q. And you had been sailing in that course from the time you met the Tecumseh?

A. West by north until 8 o'clock.

Q. What is the bearing of the coast there?

A. About east and west.

Q. Then, you hadn't gotten any further from land at 8.30 than 6?

A. Yes; because we hauled the ship a point.

Q. You said 14 or 15 miles when the Tecumseh boarded you from the nearest point, and you said the same distance later——

A. I said 16 or 17.

Q. You kept the official log of the ship?

A. I did.

Q. Didn't you put in there the best knowledge you had of your position whenever you recorded it?

A. Yes; if we had proper bearings of the lights; 4-point bearings or cross-bearings would be the proper position.

Q. Now, here you have your entry: 8.30, Havana light bearing south 10 miles.

209 A. Yes; we didn't have no bearing of the light.

Q. You now say 16 or 17 miles?

A. About that.

Q. Didn't you at the time you made this entry put down the best knowledge of your position you had then?

A. No; I knew the ship was further off, and as we had no point bearings, I put down less than the actual distance was.

Q. Why didn't you put it down the best you knew?

A. As I considered at 10 miles off the land was a long way off without having any bearings.

Q. You knew this: you knew you had been warned by the blockading ship a couple of hours before that to go further off the shore?

A. Yes.

Q. And you had been informed than that the whole coast was blockaded, and that you were likely to meet other ships as you went along?

A. Yes.

Q. Didn't it occur to you by putting your distance here on your chart nearer to shore than you actually were that you were endangering yourself by showing you hadn't obeyed instructions?

A. No; I didn't, because any vessel coming along the coast would know we were further off at the time as well as we did.

Q. Why didn't you put down a 4-point bearing when the light was in full sight?

A. We were too far off to see the 4 points.

Q. What time do they light that light?

A. I suppose they light it at sunset.

Q. And a few minutes after sunset you left the Tecumseh?

A. Yes; shortly after we left the Tecumseh was sunset.

210 Q. When did you first see Havana light that night?

A. Shortly before 8.

Q. And what was the bearing when you first saw it?

A. A point before the beam, south by west.

Q. Wouldn't that give you the distance, seeing it then and then keeping it in sight?

Q. It would if we had taken particular notice. We could have taken 4-point bearing then until we had gotten past it.

Q. You say you came on deck when the gun was fired?

A. Yes.

Q. Did you notice the direction then of Morro light?

A. Couldn't see it—not off the deck.

Q. Did you go on the bridge?

A. Yes.

Q. Could you see it there?

A. No; I couldn't see it off the bridge. I had to go higher still to see it.

Q. Did you see it?

A. Yes; I saw it from the compass pole, about 15 ft. above the bridge.

Q. What direction was it in then?

A. The light bearing southeast by south half south.

Q. Was anything said about the light by the capturing officer, or anything spoken about your position at that time?

A. I couldn't say. I don't recollect them saying anything.

—. I don't know whether you have got the position of Havana light at the time of the boarding by the Tecumseh. You say you couldn't see it?

A. I couldn't see it at all.

211 Q. Then 8 o'clock was the first you saw it?

A. Shortly before 8.

Q. Then you kept it in view until after you went below?

A. Yes; until I went below; that is the last I saw it from the deck or bridge.

Q. I notice here on your log that you start "from Halifax, N. S., towards Kingston and Vera Cruz" until the morning of the day you were captured, then you say Vera Cruz and Kingston.

A. Vera Cruz was our destination.

Q. All except the last page reads Kingston and Vera Cruz; the last reads Vera Cruz.

A. Vera Cruz we were bound to first, to my knowledge; Vera Cruz and Kingston was our destination.

Q. You didn't know of any instructions being given other than in the ship's papers?

A. I didn't know of anything other than the instructions that the voyage — for Vera Cruz and Kingston.

Q. Where did you first understand you were first going to make a landing?

A. Vera Cruz.

Q. And you never heard anything about going to Sagua?

A. Our route was from Halifax to Vera Cruz and Kingston.

Q. Did you understand from the very start you were going to Vera Cruz first?

A. Yes.

Q. Why did you put it down Kingston and Vera Cruz?

A. I must have made a mistake. Vera Cruz was our first port of call.

212 Q. If you had known, as mate of that vessel, that your master had secret instructions to land on the north coast of Cuba, would you have gone on the ship?

A. Not if he had secret instructions, I wouldn't. I don't think there were any secret instructions. I heard Captain Farquhar sa-ing we were not to go near any blockaded port.

Q. Did you hear Capt. Farquhar say to land at Sagua or Caybarien?

A. No; I didn't hear any such thing.

Q. You heard it now, that he said it was so.

Q. I heard Capt. Farquhar say not to go to any blockaded ports.

Q. Did you hear Capt. Malcolm testify yesterday? You heard him testify he had these verbal instructions to go and land his cargo at Sagua or Caybarien?

A. Yes; if it was not blockaded.

Q. You never heard anything about that until after you were seized?

A. No.

Q. When did you first hear that he had such instructions as that?

A. Until here.

Q. In court?

A. Yes.

Q. What I ask you is, would you have sailed on a ship with such instructions as that if you had known it? Wouldn't you have protested against it?

A. If I had known of danger, I would.

Q. You knew you were going through the blockading fleet, in close proximity?

A. Yes; but we had orders not to go near a blockaded port.

Q. Had you known the master of this ship had verbal instructions to land on that coast, part of which you knew to be blockaded, wouldn't you have protested against sailing under such orders?

213 A. No; I wouldn't because our instructions was not to go near a blockaded port, and I know if there was any danger we were not to go near it.

Q. How far do you call near?

A. Keeping out of danger, I suppose; we were a long way out of land.

Q. Sometimes you were 3 or 4 miles of it?

A. That was in mid-channel; you can't help it, with land on both sides—shoals on one side and land on the other.

Q. Have you ever been to Vera Cruz before?

A. No.

Q. You say you are about 50?

A. About that.

Q. During the blockade of the southern ports during the civil war, were you there?

A. I was on the other side of the Atlantic; I didn't come this side.

Q. You spoke about giving the ship the benefit of the doubt; what do you mean?

A. Giving the ship the benefit of the doubt means letting the ship have the benefit, if any, of the distance off shore—that is, like soundings, when they lost a ship, they said, why didn't the captain give the ship the benefit of the doubt? If he had given the ship the benefit of the doubt and run in deep water, he would not have lost his ship. It was one of the best boats the Allens lost by not giving the ship the benefit of the doubt.

214 LEVI BURSEY sworn.

By Mr. BARKER:

Q. What is your position on the Newfoundland?

A. Second mate.

Q. How long have you been on her?

A. I have been on her this trip and the last trip, too. I was paid off in Halifax.

Q. Were you second mate the last trip?

A. Yes, and second mate since March. We pay off every trip.

Q. Were you on watch on the evening of the 19 July?

A. Yes.

Q. What hour?

A. I was on from 4 to 6.

Q. When did you go off?

A. About half past 6, after the Tecumseh left us. I was on deck. The mate had gone to his tea.

Q. That was quarter to 6.

A. I didn't keep any log.

Q. Did you keep no log at all?

A. I kept no log for the voyage.

Q. You are speaking now from memory?

A. Yes.

Q. And you were on deck until half past 6?

A. Yes.

Q. Then you went off?

A. Yes.

Q. Until when?

A. Until 8 o'clock.

215 Q. Who did you relieve when you went on deck at 8 o'clock?

A. I relieved the mate.

Q. At that time were the lights lit on the vessel?

A. Yes; and burning bright.

Q. The masthead?

A. Yes.

Q. And the side light?

A. Yes.

Q. And what other lights are on the ship?

A. The binnacle lights. That is all I know about.

Q. Those lights you mentioned were lit and burning brightly?

A. Yes.

Q. Were they put out between 8, when you came on deck, at any time and 10, when the Mayflower captured you?

A. No; they were not put out.

Q. You are perfectly sure of that?

—. Yes; I am perfectly sure of that.

Q. What course did you run after 8 o'clock?

A. Steered west in my watch.

Q. You found the vessel on a west course when you took charge?

A. Yes; she was on a west course then.

Q. While you were on deck, between 8 and 10, did you at any time see any vessel of any kind following you?

A. I saw no vessel whatever.

Q. When did you first see the Mayflower?

A. I saw her about 5 minutes before the gun was fired, to my knowledge. It may be more, it may be less. I didn't see the ship at all. I only saw the light.

216 Q. Was it a search-light?

A. Yes.

Q. You didn't see the ship at all until the search-light was put upon your vessel?

A. No.

Q. And that, you think, was 5 minutes, maybe more or less, before the gun was fired?

A. Yes; I reckon it was that; right astern, pretty near astern.

Cross-examination by the DISTRICT ATTORNEY:

Q. When you went on deck, what was the bearing of Morro?

A. I didn't take the bearings.

Q. You know about what; your recollection about it.

A. I have no recollection of the light. I went on the bridge. I saw the light as I was passing. I didn't take any bearing of the light. I have no recollection of it. I know I saw the light, and that was all.

Q. You were then running on a west course?

A. Running on a west course.

WILLIAM CODY sworn.

By Mr. BARKER:

Q. What is your position and duty on the Newfoundland?
A. Seaman and lamp-trimmer.
Q. Have you charge of the lamps?
A. Yes.
Q. On the night of the 19 July, the night you were captured, did you light the lamps?
A. Yes; and put them out.
Q. When did you light them?
217 A. Sunset.
Q. When did you put them out?
A. I put them out as the sun was going down. I had them lit, and was putting them out as the sun was going down.
Q. Did you put them where they belonged?
A. Yes; the masthead, and then the port light, and then the starboard light.
Q. You did that at sundown?
A. Yes.
Q. Did those lights remain burning in that position you put them in?
A. Yes; those were there burning when I came on at 12 o'clock, in the same position.
Q. When did you leave the deck after lighting the lamps?
A. After 8 o'clock.
Q. Were they burning then?
A. Yes.

Testimony of Horatius Shawner on Final Hearing.

HORATIUS SHAWNER sworn.

By Mr. BARKER:

Q. What is your position on the Newfoundland?
A. Shipped as sailor.
Q. What were your duties on the evening of the 19th?
A. I was at the wheel.
Q. At what hour?
A. I was at the wheel when the ship was captured.
Q. When did you take the wheel?
A. 10 to 12.
Q. Before that, how long had you been at the wheel before
218 the ship was captured?
A. I don't know how long before the ship was captured; the watch at the wheel was 2 hours.
Q. What was it when the ship was captured?
A. I have no idea what time the ship was captured; I don't know whether it was before or after 10.
Q. You have no idea when you took the wheel?
A. I don't know whether it was before 10 or after 10.

Testimony of Levi Blackmore on Final Hearing.

LEVI BLACKMORE sworn.

By Mr. BARKER:

Q. What is your position of the Newfoundland?
A. Sailor.
Q. Did you ever take the wheel?
A. Yes.
Q. Did you take the wheel on the night of the 19 July at any time?
A. Yes; from 6 to 8.
Q. Where was the vessel at 6?
A. She was off the land, a long way off.
Q. Some distance off from the land?
A. Yes.
Q. Were you east or west of Havana entrance?
A. I don't know.
Q. What course was she steering while you were at the wheel?
A. West by north.
Q. Who put her on that course?
A. The chief mate gave me the course.
219 Q. Were you on deck when the Tecumseh came up to you, that first war ship that came up to you at 6 o'clock?
A. Yes.
Q. Had she gotten to you before or after you took the wheel?
A. I don't know; I couldn't remember.
Q. How long did you run the ves-el on that course?
A. Till 8 o'clock.
Q. Was her course changed at 8?
A. A few minutes after 8 it was changed to west.
Q. Who changed it?
A. The captain.
Q. Were the lamps lit at that time?
A. Yes.
Q. Masthead?
A. Yes.
Q. Port?
A. Yes.
Q. Starboard?
A. Yes.

Cross-examination by the DISTRICT ATTORNEY:

Q. How many men were in the watch?
A. 3 in our watch; with the mate, 4.
Q. Were you on deck when she was captured?
A. Yes.
Q. How many were in the watch on deck at that time?
A. The same company—3, and 4 with the mate.
Q. Were you on deck at the time of the capture?

A. Yes.

220 Q. Was it your watch?

A. No.

Q. What were you doing there?

A. I heard the gun and I came on deck.

Q. Were you dressed?

A. No; I just had on just light clothes.

Q. How many others came up on deck with you?

A. I don't know.

Q. You don't recollect how many were on deck when the officer came aboard?

A. I don't know, I *ma* sure.

Q. Quite a little crowd?

A. I expect pretty near all were on deck, as far as I know; probably not half on deck; I didn't take notice.

Q. Have you ever been into Havana?

A. No.

Testimony of G. W. Payne on Final Hearing.

G. W. PAYNE sworn.

By Mr. BARKER:

Q. What is your first name?

A. George W.

Q. What is your position of the Newfoundland?

A. Chief engineer.

Q. How long have you been on that ship in that capacity?

A. 18 months.

Q. How long have you been chief engineer at sea?

A. 12 years.

221 Q. From the position of the engineer in a steamship, do you at any time know of your own knowledge, from the running of the engine, the actual speed the ship is making?

A. No.

Q. Does the record you keep in your office show?

A. Merely the number of revolutions of the engine.

Q. What is the full capacity in revolutions of the engines of that ship?

A. The greatest number of revolutions per minute, light ship, 65.

Q. What is the ordinary number of revolutions in running her as you did from Halifax to Havana, where you were captured?

A. The greatest number of revolutions, 60.

Q. What is the ordinary average number?

A. 60.

Q. Have you any record of the time in your office?

A. What do you mean?

Q. How do you tell the time—have you a clock there?

A. Yes.

Q. Do you keep a record of the time?

A. Yes; every watch.

Q. Do you keep a log?

A. Yes.
Q. Did you keep a log on this voyage from Halifax?
A. Yes.
Q. Have you it with you?
A. In port; yes.
Q. (Handing witness log.) Turn to page that contains the record of the evening of the 19 July. The entries in that book are made by you?
A. Yes.
222 Q. At the time the occurrences take place?
A. Yes.
Q. What is the hour, according to your record, at which the engine was stopped on the evening of the 19th?
A. By which steamer?
Q. Tecumseh.
A. 6.10.
Q. The time as recorded by you by the engine-room clock?
A. Yes.
Q. Was that the order you got to stand by or actually stopped?
A. Actually stopped.
Q. Is there any record of the order to stand by?
A. No; that is never kept.
Q. How many revolutions had you been running before that?
A. 56 during the fore part of the day; 58 from 4 to 8.
Q. Give us the revolutions after you started again. At what time did you start?
A. 6.30.
Q. Give us the revolutions after you started?
A. 58 up to the time we were stopped by the Mayflower, at 10.

Cross-examination by the DISTRICT ATTORNEY:

Q. This column of remarks, when did you make those?
A. That day.
Q. At the very time they occurred?
A. Yes.
Q. What is your age?
A. 39.
Q. Of what place are you a native?
223 A. Nova Scotia.
Q. In what town?
A. Yarmouth.
Q. Of what nationality were your parents?
A. Citizens of the United States, State of Maine.
Q. That is how you get your name?
A. Yes; George Washington never told a lie.
Q. You kept this log and put down these things just as they occurred?
A. Yes; daily.
Q. You would log up at the close of the day or just as they occurred?
Q. The speed and the consumption of coal and the steam carried

I would put down every 4 hours by the engineer of the watch, and I would copy it off in the evening, after 8 o'clock, into the log.

Q. It was put down in chalk?

A. Yes.

Q. And that is the time you wrote these remarks in your log?

A. Sometimes, and sometimes I would put them down as they occurred; generally I put down the remarks as they occurred.

Q. Did you log the incident there of being stopped by the Badger, the first vessel that stopped you?

A. Yes; and I put it down as it occurred.

Q. Just at the very time?

A. Yes.

Q. Did you log the time?

A. Yes.

Q. Sure of that?

A. Oh, yes.

224 Q. And did you log the time you went ahead, so as to show the time you were stopped?

A. I generally put down the time we were stopped and the time we go ahead. Sometimes the time is not put down just there. The hour is on the left-hand side. Generally if put down at the same time, generally on the same line.

Q. The first two vessels that stopped you, how far apart were they in time?

A. I don't remember.

Q. I notice this first entry in regard to the blockade: "Stopped by U. S. S. Badger and informed of the blockade of the entire Cuban coast; ahead at 1.50 a. m.; stopped at 4.10; ahead at 5 a. m." Do you know what that stop at 4.10 was for on the morning of the 18th?

A. I think it was to stop for daylight to go through the channel, if I am not mistaken—the Bahama channel, if I recollect—and we stopped for daylight so the captain could pick out the channel.

Q. You think, then, you stopped there 50 minutes to wait for daylight?

A. That is what I understood it was for.

Q. What part of the coast were you off then?

A. Between Cuba and the Bahama islands.

Q. Do you know what was the nearest port on the Cuban coast?

A. No; I don't.

Q. You said here that the Badger informed you of the blockade of the entire Cuban coast. Were you present with the boarding officer and Capt. Malcolm?

A. I got that from the captain.

Q. When did he tell you that?

225 A. Shortly after the Badger left us.

Q. Then you did not make that entry until after the Badger had gone?

A. No; just about that time.

Q. Your next entry is "Steaming easy to save coal"?

A. Yes.

Q. Was coal getting short?

A. Yes.

Q. On July 19th your first entry, "Owing to blockade, we continued course to westward to Jamaica for coal"?

A. Yes.

Q. Was Jamaica to the westward of you?

A. No.

Q. Was it not at the time you made that entry shorter to go eastward to Jamaica than westward?

A. I don't know.

Q. When did you make that entry?

A. I don't recollect whether I made it—very likely I made it just opposite to the hour in the log book. As a rule, I make those entries to correspond with the hour in the log book.

Q. This begins at 3 and ends at 6.

A. It would be somewhere between those hours, probably on the first line.

Q. 3 o'clock in the morning?

A. Likely to be about that time.

Q. I don't find anywhere previous to that anything about your destination or anything about that stated in your remarks. You speak of a fireman being taken sick, and wind and weather; such things as that; but of the course and all that, that is the first entry I see of anything of that sort. Why did you put down that? Who told you you were going to——

226 A. Captain Malcolm.

Q. When did he tell you that?

A. Just about the time that entry is made there; some time on that day.

Q. All these other people on the boat seemed to understand they were going to Vera Cruz—at any rate, the first mate was under the impression; in fact, supposes that they were going and directly on the way to Vera Cruz. Now, what was your idea of where you were to make a landing first?

A. When we left Halifax I had no idea where we were going to land.

Q. You made these headings here towards Vera Cruz and Kingston?

A. Yes.

Q. From July 9, when you left Halifax, you started out towards Vera Cruz and Kingston and you kept that same heading until July 19, and then you changed it from Halifax towards Kingston, Jamaica?

A. Yes.

Q. What I want to know is, why did you change it on that day?

A. Because, as we were getting short of coal, the captain decided not to continue to Vera Cruz, but go to Kingston, which was one of his ports, for coal.

Q. Was it not further from where you were to Kingston, in the way you were going, than to Vera Cruz?

A. I don't know anything about that.

Q. You were on this vessel on her previous trip?
A. Yes.
Q. And where were you about the 4th or 5th of July?
A. In Halifax.
Q. You left Halifax on this trip on the 9th?
A. Yes.

227 Q. From the 4th or 5th of July, do you know about a number of your men deserting about that time?
A. Yes.

Q. What was the trouble; what caused them to desert?
A. I don't know.
Q. You had had some trouble on the previous voyage that you made?
A. I don't know of any trouble.
Q. About this shortage of coal, have you taken on coal since you left Halifax?
A. On the last trip; no.
Q. You had coal enough to bring you from Havana to Charleston?
A. Yes.
Q. And there is coal in the bunkers now?
A. Yes.
Q. How much in there now?
A. 75 to 80 tons.
Q. You burnt about, according to your statement here, about 12 tons a day?
A. 17 tons.
Q. If you burnt 17 tons, according to your record along the first, then you reduced here to 12?
A. Yes; that is so, some days; if you notice, the consumption varies according to the speed of the ship.
Q. Coming from Havana to Charleston, I notice you burnt from 15 to 16; you made full speed, revolutions 60, 63, and 65?
A. Yes.
Q. Then you had left, when you got to Charleston, 4 or 5 days of coal, under full speed?
A. Yes; about that.

228 By the COURT:

Q. At what time did the captain tell you he was running short of coal?
A. On the 18th.
Q. Were you on deck at all after 6 o'clock on the afternoon of the 19th?
A. Yes.
Q. When were you on deck?
A. I was on deck at 8 o'clock and again at 10.
Q. Did you notice whether the running lights were burning?
A. I did not notice them. I never was in the habit of noticing them.
Q. Was there any time between 6 o'clock and 10 o'clock, between

the time the Tecumseh boarded you and the Mayflower boarded you, when you lowered your speed?

A. I think so.

Q. Any time after you left at 6.30, if that was the hour, up to 10, when the Mayflower boarded you, when your speed was diminished?

A. After 8 o'clock—I think, between 8 and half past—speed was reduced 2 or 3 revolutions.

Q. Was there any special occasion for doing that?

A. No more than the saving of coal, to reduce the consumption of coal.

Q. Were your instructions from the master or mate?

A. No; on my own responsibility.

Q. With that exception, you steamed steadily ahead from the time the Tecumseh left you until the Mayflower captured you?

A. Yes.

Q. Could you tell the course you were going the whole of that time?

A. No; I could not tell anything about the course at all.

229 Captain MALCOLM recalled.

By Mr. BARKER:

Q. The chief engineer's log records on the 18th July, "Stopped at 4.10; ahead at 5 a. m.;" and the mate's log, on the 18th July, "Stopped engine 4 a. m." Will you explain to the court what reason you had for stopping? What caused you to stop at that time and place?

A. I had compared positions previous to that with the boarding officer of the Badger. He told me that his position was 11 miles from Maternillas point. My position at that time put me 15 or 16 miles further north. I knew that if my possession was correct I would get into the Bahama channel on the course I was steering, about mid-channel. If I accepted his position it would have put me very nearly on the rocks. I ran, after I left the Badger, as far as I considered it safe, and then I stopped the ship to wait for daylight, to get my vessel safely through; that is the reason I ordered the engines stopped. As soon as I ascertained my position I started again.

Q. I find in the chief engineer's log, July 18, at 4 p. m., "Running slow; 5.15 to 9.25, increased speed." State what the reason for running slow at that time was.

A. The boarding officer of the Badger, Lieut. Titus, told me the only light I would see lit on the Cuban coast from that point until I got to Havana would be Key Francis, which, he said, had been taken by the Americans and the light. Key Francis is at the entrance of Caybarien. I saw I was going to pass that light before dark, and I felt if I could have seen that light lit it would have eased me in the position I was in, and I slowed the ship and went aloft, and I saw the light of Key Francis; after I saw it I proceeded again. That is the reason I slowed the ship down that particular time.

230 —. Did you during that time change your course from the straight course you had been running?

A. I don't remember now whether I did or not.

Q. Refresh your memory and look at the chart and say whether you did or not.

A. Not materially. I changed my course a little. I followed the line of the coast.

Q. What had you been following before?

A. The coast; but the coast there trends to the southward of west. I did not go any nearer the land than I had been sailing.

Reply.

Testimony of W. V. Pratt on final hearing in reply.

Testimony in reply.

Lieut. PRATT recalled.

By the DISTRICT ATTORNEY:

Q. With regard to the departure that you made from Havana, going to Charleston, can you state—I don't know that I can give you the nautical language—how you arrived at the point of your departure?

A. It was necessary before setting our course for Charleston—it was necessary to find some nearly fixed point. I worked out 17 miles, was about right, and the captain thought 19, and we split the difference to 18, bearing Morro light south-southeast, and so I put it in my notes, and there we laid the course, north by west.

Q. Was Morro light visibld from the bridge of the Newfoundland at that time?

A. Yes; it was visible from the deck.

Q. Had the vessel changed her position from what she was in at the time of capture?

231 A. If changed any, it was drifting out; the set was out.

Q. If anything, you werr further from the light at the time of departure than capture?

A. Yes; I saw at the forenoon watch, from 8 to 12 in the morning, which corresponds to 8 to 12 midnight, we had a strong set out that morning. A vessel lying still would tend to drift out from the coast—way from the coast.

Q. Is the current west?

A. It is variable. The particular set we had then was out from the coast. There is a set in two directions. If I should be in a position under Morro, close under all along the coast, I would frequently expect to be set in towards the coast. At that time we were getting a set to the west all outside of 20 or 15 miles, and within 10 miles we frequently get a current to the eastward and set to the off shore—to the northward. That is simply based on what we experienced lying there.

Q. I meant the current outside of 10 to 15.

A. I would expect the current outward and to the eastward. I have some pretty good idea of estimating after 35 days of estimating.

By the COURT:

Q. If you changed your position at all it would be out?

A. I made no statement that we changed it at all; if we did it would be out.

Q. This 18 miles, as I understand, was the agreed point between you and the captain to navigate the vessel?

A. Yes; we agreed on that together.

Q. Did anything in the voyage ever occur to show that you had made any error in your point of departure?

A. Not that I made any error in the point of departure.
232 From day to day we had to correct the position, due to considerable current.

Q. But nothing that showed an error in your original point of departure?

A. Nothing which led me to believe I had made any practical error in the point of departure—any appreciable error.

By the DISTRICT ATTORNEY:

Q. The position of your departure was entered on that chart?

A. It was entered.

Q. Is it there now?

A. I think not, not the exact position.

Q. Has it been changed since you put it there?

A. My position has not been changed; perhaps possibly it has been rubbed out. I should prefer some one to go over the chart and lay out south, south bearing. I don't think Captain Malcolm intended it for our departure. The mark that now is on the chart I don't think Captain Malcom intended for our departure. Our departure had been rubbed out, partially erased, from the chart, but we have agreed where that place is, which is now indicated by a little pencil dot on the chart; we have mutually agreed that that is the place.

Q. The point that I was enquiring about was to show the distance and course from Havana light of the vessel at the time you took your departure for Charleston, and that, you say, was 18 miles?

A. It was, according to the notes I have in my book, made at the time, 18 miles, Morro bearing south-southeast. The captain said now it was south-southeast half east; I am perfectly willing to grant that; I made the note in my book, Morro light 18 miles south-southeast.

By Mr. BARKER:

Q. What time of night was this?

A. 1 o'clock.

233 Q. Had the vessel started then?

A. No; she was lying still, as far as I was concerned.

Captain MALCOLM recalled.

By Mr. BARKER:

Q. State what you were going to say when stopped a few minutes ago.

A. The pencil mark on that chart off Havana at present is the correct position, copied from the chart that I was using at the time I made those marks, as I have already stated; in fact, it is only very recently but I copied them from the chart I was using to show the court the general direction on one chart; that was my purpose for doing it. In regard to the position that we agreed on, I am not positive as to the distance, but I am as to the bearing, the bearing of Morro light, Morro light bearing at the time we took our departure south-southeast half east, and during the time that elapsed between the time of stopping and taking our departure we had been drifting with the current, which I don't think is offshore, because my course along the coast should have carried me further off than it did, and from Cardenas all along the coast I found the current setting a little in towards the land. At the same time it was running a little easterly, probably east by south, and we found the next day, when we got our observations, at noon, that the correct position for the ship was to the southward and eastward of where she should have been by the log—about 20 miles in 11 hours, I think. That is all I have to say.

Q. How many miles from that point to the light-ship at Charleston?

A. I don't remember exactly; about 600.

Q. What does the mate's log show?

A. The distance run by the log—476.

Q. How was it to be accounted for?

234 A. During the passage Lieut. Pratt and I agreed, and we allowed the speed of the vessel off Havana to Charleston 8 knots and allowed 2 knots for current, making 10 miles an hour; that is what we both agreed upon coming up.

235 *Extract from Log — Mayflower.*

Extract from log of the U. S. S. Mayflower, covering the period from 8 p. m. until midnight of July 19, 1898.

8 p. m. to midnight.—Standing across entrance to Havana, course E. N. E. 60 turns, until 8.20, when, Morro bearing S. by W. ½ W. and distant about six miles, sighted light about two miles distant, bearing N. by W. Stood for it and went full speed. At 8.40 put on forced draught, 135 to 145 turns. Light disappeared and finally reappeared more to w'd. Headed for it again about N. W., when light disappeared. Stood on this course, N. W., about 30 minutes, when suddenly light showed bright on port beam, bearing S. W. Headed for it, course S. W., time about 9.10; then light disappeared.

Stood S. W. about 20 minutes, when light appeared again,
236 bearing N. W., time 9.35. Stood for it, heading N. W. Went to general quarters at 9.35. Saw no side lights at any time.

(Signed) W. V. PRATT,
Ensign, U. S. N.

From 9.35 to 9.55 standing for ship's white light, steering N. W., gradually changing to W. N. W. to keep it ahead. At 10.00 overhauled the vessel and brought her to with a blank charge. Morro light was bearing at this time S. S. E. ½ E., distant about 17 miles. She was standing to the n'd of west when overhauled. Sent Lieut. Culver to board her, who returned at 10.45 with her captain. The ship was the steamer Newfoundland, from Halifax. After examining her captain and papers the commanding officer decided to send her to Charleston for adjudication. Ensign Pratt was sent on board with the following prize crew, whose accounts were closed: M. J. Nolan, cox'n; R. M. O'Connor, G. M., 2 C.; A. Nelson, sea.; J. W. Bennett, Q. M., 3 C.; Chas. E. Botts, corp'l; Jno. A. Dixon, P. M.; James O'Brien, P. M.; Adrian Fanteux, P. M. Ensign Pratt
237 had orders to proceed to Charleston, S. C., and report to the senior naval officer present, and to deliver the "Newfoundland" to the judge of the U. S. district court or to the U. S. prize commissioners at that place. At end of watch, lying to awaiting return of our boat from the Newfoundland. No other ships of the blockading squadron were within signal distance from 9.35 until midnight.

A. E. CULVER, *Lieutenant.*

I certify that the foregoing is a true and a complete copy of the log of the U. S. S. Mayflower from 8 p. m. until midnight of July 19, 1898.

A. E. CULVER,
Lieut. U. S. N., Navigating Officer.

238 *Memorandum Attached to Chart.*

In the District Court of the United States for the District of South Carolina.

UNITED STATES
vs.
THE STEAMSHIP NEWFOUNDLAND and CARGO.

This chart was introduced in evidence at the trial on the examination of Frederick Malcolm, master, as showing the course and position of the steamship Newfoundland on her voyage from Halifax to the point of capture, and particularly her passage through the old Bahama channel and connected waters.

After the argument the court requested the respective opposing parties to mark on the chart the various positions mentioned in the testimony—that is, of the Newfoundland—as testified to by the

master of the U. S. ship of war Mayflower and of the U. S. ship of war Tecumseh, as located by a diagram or sketch prepared by Lieut. Culver. It was objected at the trial by Mr. Barker, proctor for the respondents, owners of the ship and cargo, that the testimony of the witness for the plaintiff who undertook to fix the position of the several vessels and to locate the same on the diagram or on the chart was incompetent, and either hearsay or mere guesswork. The objection was overruled and the testimony admitted; to which the proctor for the respondents excepted.

The clerk will include this paper in the record.

WM. H. BRAWLEY, *U. S. Judge.*

17 Sept., 1898.

239 *Opinion on Final Hearing.*

Filed 12 Sept., 1898.

UNITED STATES OF AMERICA, *District of South Carolina.*

In the District Court. In Admiralty.

THE UNITED STATES *vs.* THE "NEWFOUNDLAND." } Opinion.

BRAWLEY, *District Judge:*

The opinion, filed August 17th, on the preliminary hearing, based upon the testimony *in preparatorio*, sets forth the facts relating to the conduct of the Newfoundland up to the evening of July 19th, when she was captured off the port of Havana, and the cause is now before me upon an order for further proof, and the additional testimony relates to occurrences at the time of and immediately preceding the seizure.

As was stated in that opinion, a mere suspicion of an intention to violate the blockade, however well founded, is not sufficient ground for condemnation. There must be some overt act denoting an attempt to do the thing forbidden; some fact, in addition to the proved intention to commit the infraction, which shows that the unlawful intent is persisted in and is being carried into execution.

The precise question now to be considered is whether there is sufficient evidence of acts denoting the intention to break the blockade at Havana, for to that point the additional testimony has been directed. Upon the preliminary hearing, the court was led to believe that the American consul at Halifax was in posses-
240 sion of information that would have an important bearing upon the issue, but no testimony from that quarter has been offered.

Actual entrance into a blockaded port rarely can be and need not be proved, for if that were so captures would cease to be possible, and as no instrument has yet been devised by which the operations of the human mind can with certainty be disclosed and intentions

must be inferred from acts, so it must be that in all cases of this nature proof must rest largely upon presumptions, and accordingly as those presumptions are or are not unavoidable, acquittal or conviction follows.

Condemnation cannot justly follow proof of facts from which mere mental intention can be inferred, unless there is also proof of acts, from which the presumption necessarily arises, that there is the beginning to put into execution the unlawful intent. The sailing for a prohibited port, after knowledge of the blockade, with intent to enter, is held to be such overt act. So the appearance before a blockaded port for the alleged purpose of inquiry, when the blockade is generally known, has been held to be a breach of the blockade, on the ground that such approach would afford great facility for eluding it, and knowledge honestly sought could be obtained elsewhere.

Sir William Scott is the great luminary from which we derive most of our light on the law of prizes. He regarded the breaking of a blockade as an act of deep turpitude. In that opinion I do not agree, perhaps from an early experience of and modest participation in some of its benefits, and I am aware that, notwithstanding his great ability, his purity of character, and charming manners, he did not escape the censure of his contemporaries, and
241 that the severity of his judgments led to the charge of "ministerial subserviency."

In the Neutralitet, 6 Rob., 35, with a vigour and beauty of diction which must charm if it does not convince, he thus states the law: "It will not be necessary in the present case to lay down a general principle on this point, but I am disposed to agree to a position advanced in argument that a belligerent is not called upon to admit that neutral ships can innocently place themselves in a situation where they may with impunity break the blockade whenever they please. If the belligerent country has a right to impose a blockade, it must be justified in the necessary means of enforcing that right; and if a vessel could, under the pretence of going further, approach Cyprés, close up to the blockade port, so as to be enabled to slip in without obstruction, it would be impossible that any blockade could be maintained. It would, I think, be no unfair rule of evidence to hold as a presumption *de jure* that she goes there with an intention of breaking the blockade; and if such an inference may possibly operate with severity in particular cases, where the parties are innocent in their intention, it is a severity necessarily connected with the rules of evidence and essential to the effectual exercise of this right of war."

Describing the catholic character of the prize jurisdiction, he thus expressed himself: "I trust that it has not escaped my anxious recollection for one moment what it is that the duty of my station calls for from me, namely, to consider myself as stationed here not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out, without dis-
242 tinction, to independent States, some happening to be neutral and some to be belligerent. The seat of judicial au-

thority is indeed locally here, in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character." 2 Rob., 295.

With this statement of the principles of law generally applicable in cases of this nature, the circumstances attending the capture will now be considered as bearing upon the charge that the Newfoundland was loitering in the neighborhood of Havana with intent to enter. Lieut. Evans, in command of the U. S. S. Tecumseh, testifies that about 5 o'clock in the afternoon of July 19th, while on his station in the blockading squadron, 6 or 8 miles to the north and eastward of Havana light and about 3½ miles from the nearest shore, he sighted the Newfoundland moving towards him on a westerly course; that he immediately stood towards her at full speed, about 10 knots, and overhauled her, sending his mate aboard to examine her papers. He estimates his position at the time as being latitude 23.15 north; longitude 82.13, and on a diagram prepared by the navigating officer of the Mayflower, and offered in evidence, he fixes her position as being unquestionably within a dotted circle; thinks that it was about the centre of the circle, but having taken no measurements at the time would not undertake to fix it closer than within 3 miles. He fixes the hour of
243 boarding at 5.35, and says that he left her "in the vicinity of 6 o'clock," she bearing off on a course about west by half north. Mate Nickerson, of the Tecumseh, fixes her position at the time of sighting the Newfoundland at 6 to 8 miles from Morro light and about 3½ to 4 miles from the nearest shore, the Newfoundland being at that time about nine miles to the northward and eastward, sailing west, the Tecumseh sailing about 4 miles to overhaul her. He fixes the hour of boarding at 5.35 exactly, and says that he returned aboard his ship about 5.50. He failed to enter upon the log of the Newfoundland the hour of boarding, as is usually and always should be done. He locates the point of boarding upon the diagram as does Lieut. Evans; saw the Newfoundland for about 10 minutes after she stood off one or two points to the north of west, and says "it began to settle down dusk then."

Ensign Pratt, of the Mayflower, whose watch began at 8 o'clock, testifies that about 8.20 he picked up a small light bearing north by west from him; reported the same to the commanding officer, who ordered the ship headed for it north by west and the engines rung ahead full speed. Shortly after heading for it the light was lost, but, standing on the same course about 20 minutes and putting on forced draft, the light was picked up again a little to the westward. Altering his course and heading north-northwest, the light shortly disappeared again. He gradually changed his course to the westward until he headed about northwest, standing on that course

about 30 minutes, still not seeing the light, when, about 9.10, he sighted it again, bearing southwest on his port beam and inshore; headed for it again and stood on until about 9.30, when the light was seen outshore of him on his starboard beam and headed
244 for it again and came up with her at 10 o'clock. From subsequent developments it is clear that the light thus described was that of a lantern hanging on the wall of the companionway in the after deck-house of the Newfoundland, visible only when nearly abeam through the doors on either side. It would be open only to about ¾ of a point of the compass, and the Mayflower at full speed, making at times 16 miles an hour, would pass the point of visibility, until by changing her course it would again become visible and be picked up, first on one quarter, then on the other. When the light was first seen the Mayflower was heading east-northeast and the light was bearing north by west from her, a point forward of the port beam, and estimated to be from 2 to 3 miles distant. No other lights were seen on the Newfoundland until she was overhauled. At that time all of the regulation lights were found to be burning brightly.

Lieut. Culver, navigating officer of the Mayflower, describes the chase substantially as above and exhibits a tracing made on July 20th, showing the estimated positions of the respective vessels at the time when the light was first discovered and at the time of the capture and the course sailed by each.

Commander Mackensie, of the Mayflower, was the senior officer of the blockade off Havana. The Mayflower covered about 5 points of the compass on the bearing from Morro light and had been on that station during the month of July. He says that about 8.30 a faint light was reported about north by west of him, which he thought was a plain lantern. He describes the chase and locates the positions of the two vessels on the tracing prepared by Lieut. Culver. From this testimony and upon this diagram it would
245 appear that the Newfoundland when boarded by the Tecumseh was at a point within a circle whose centre is 10¾ miles from Morro light, whose bearing was southwest ½ west.

The testimony from the Newfoundland relating to the same matter will now be stated.

Captain Malcolm, the master, says that he was boarded by the mate of the Tecumseh 14 miles off shore—off the nearest land—while sailing on a westward course; that the boarding officer, after examining his papers, advised him not to go any nearer the land lest he should get a shell into him, and left him at 6.30; that thereafter he stood on a course one point north of west until 8 o'clock, when the Havana light bore about south by west, and from that time he put his ship back on a course due west, which he followed until boarded by the Mayflower. He exhibits a chart, on which he has marked his course, and says that at 8.30 he passed Havana light, being 17½ miles from it; that at 10 o'clock, when boarded by the Mayflower, he was 21 miles from Havana light, which bore then southeast by south half south.

Salkus, the mate of the Newfoundland, testifies to the boarding

by Tecumseh at 6.10, and that the Havana light-house and Morro castle *was* not visible; that they started on their course at 6.30, and at 8.30 were abreast of Havana light, which bore south about 16 or 17 miles. In explanation of the entry in his log he says that he took no bearings at the time of the entry and knew that the ship was farther off than ten miles. He says that at the time of the capture Morro light was not visible from the bridge, but that he saw it from the compass pole, 15 feet above the bridge.

Payne, the engineer, testifies to the boarding by the Te-
246 cumseh at 6.10, and his log contains an entry showing that the engines stopped at 6.10 and started again at 6.30.

It thus appears that there is a wide divergence in the testimony as to the point at which the Newfoundland was when boarded by the Tecumseh, and some divergence as to the time of such boarding. Lieut. Evans and his mate fix this location within a circle whose radius is 3 miles. They say that they are certain as to her location within 3 miles, and believe that she was about the centre of that circle, which is 10½ miles from Morro light. Captain Malcolm and his mate fix the location at a point 24 miles from Morro light, 13½ miles from the centre of the circle above referred to, and 10½ miles from that point of the circle nearest to the Newfoundland.

There is a marked discrepancy, and the first point to be decided is which is correct. Applying the usual tests by which testimony is weighed—the intelligence of the witnesses, their opportunities for knowing the truth, the likelihood of error arising from considerations of interest, and other influences which commonly sway men's minds—there can be no doubt that there is a preponderance of probability in favour of that side which, having no interest in the controversy, has the greater opportunity of knowledge.

Lieut. Evans and his mate were on cruising grounds with which they were familiar. There could be no difficulty in ascertaining their position from the bearing of Morro, which was in plain sight day and night. They were within 3 or 4 miles of the shore, with well-defined objects from which bearings could be had. It was their manifest duty to know where they were, for they had to keep within certain prescribed limits. They are men of education,
247 character, and intelligence, and their testimony cannot be discredited without imputing to them a reckless carelessness for which there is no warrant.

Neither Captain Malcolm nor his mate were familiar with the locality; the former had once before been to Havana; the latter, never. Their interest is obvious. I have no difficulty in coming to the conclusion that the preponderance of evidence fixes the position of the Newfoundland within the described circle when boarded by the Tecumseh. I am not so clear as to the time. The mate Nickerson fixes it at 5.35 precisely, and says that he returned to the Tecumseh at 5.50, but he says that he watched the Newfoundland for about ten minutes after she left, when "it began to settle down dusk."

The sun set in that latitude on that day about 6.30, and there is little twilight.

The officers of the Newfoundland fix the hour of boarding at 6.10 and time of departure at 6.30, and these figures are entered upon the engineer's log. This log has been in possession of the claimant since the capture, and some erasures appear in another part which may hereafter call for comment, and it therefore cannot be accepted as absolute verity; but giving the ship the benefit of the reasonable doubt which the testimony warrants, assuming that she sailed at 6.30, she is next seen by Ensign Pratt about 8.20, when he sighted a small light bearing north by west from the Mayflower, whose station on the cruising ground lay next west of the Tecumseh and whose position at that time was about six miles north by west from Morro light. This small light was estimated to be about 2 or 3 miles from the Mayflower. The mate of the Newfoundland made this
248 entry upon her log: "8.30, Havana light bearing south 10 .miles." If this testimony is taken as true, this would place the Newfoundland at a point 7 miles from the center of the circle adopted as the point of departure, and 10 miles from the extreme western circumference of it, and it would follow that she had consumed two hours in making that distance. As her speed during her voyage was on an average nearly 8 knots an hour, there is a considerable margin of time to be accounted for, which she endeavours to do by fixing her location at 8.30 at a point 17 miles from Havana. This is the testimony of her master, and the mate concurs in it, saying that the entry in his log was not an accurate statement of the ship's position at that time; that it was only intended to show that she was at least 10 miles from Havana light. It is not necessary to discuss nor decide now how far a ship is concluded by the entries in her log. If the party making such entry is shown to have been drunk at the time or habitually careless, or if made in a perfunctory way, without observations or the opportunity of observation, little weight might be given it; but the log being intended to be a correct record of the facts contained therein, an entry made with full knowledge and opportunity of ascertaining the truth must be accepted as the truth if it tells against the party making it, and can be denied no more than a deed. If it is the result of a mistake, there must be conclusive evidence of the mistake. It is sufficient to say that such evidence has not been adduced here, and the entry upon the log, confirmed as it is by the testimony from the Mayflower, fixes the position of the Newfoundland at 8.30 at a point about 10 miles from the Havana light. From that point to the point of seizure her course can be marked
249 with sufficient accuracy. That she sailed on a straight course from 8.30 to 10 o'clock, and that such course led her away from the entrance into the port of Havana, is entirely clear, whether the point was 17 miles from Morro light, as claimed by the Mayflower, or 21 miles, as claimed by the Newfoundland, or 18 miles, as agreed upon by her master and Ensign Pratt as the point from which they took their departure after the seizure, when they started upon their voyage to Charleston.

The next incriminating charge is that the Newfoundland was sailing without lights. Ensign Pratt, who first sighted her, says he

picked up a small light. All the witnesses from the Mayflower describe this light as that from an ordinary lantern, and not the masthead light. None of these witnesses saw any of the regulation lights until they came up with her, about 10 o'clock, when they were all brightly burning. After the chase began these regulation running lights, being visible only two points abaft the beam, would naturally not be seen.

Coming westward from the point where she left the Tecumseh to the point where the faint light was sighted, her masthead light, whose visibility by the regulations is at least 5 miles, should certainly have been seen if there was proper vigilance aboard the Mayflower. That Ensign Pratt was vigilant is demonstrated by the fact that he picked up the dim light 2 or 3 miles off at 8.20. He went on duty at 8 o'clock. The officer who had the watch before that hour was not examined, nor were the lookouts, who are described by Commander Mackensie as uncommonly efficient men. As it is, the testimony leaves this question open to reasonable doubt. While it is probable that the masthead light, if burning and not screened, would have been visible to Ensign Pratt at the time he
250 descried the small light, he does not say with certainty that it would have been, there being but a narrow limit of visibility.

The witnesses from the Newfoundland, including the sailor who lit them, all testify that the lights were lit at the usual hour and they were all burning when she was overhauled.

Commander Mackenzie and other witnesses from the Mayflower all testify that the small light already described was the only one seen; that there were no stray lights, such as are commonly seen aboard a steamer in the night time.

Taking the point of departure to be somewhere within the circle already described and the time of departure at 6.30, and the rate of speed at nearly 8 knots, and following the courses described—west by north until 8 o'clock, and then due west until 10 o'clock—and plotting it upon the chart, I must conclude that she would have been some miles farther west than either the point claimed by her or the point testified to by the officers of the May flower at the point of capture at 10 o'clock, unless she had loitered somewhere upon her route.

Outside the domain of the exact sciences, absolute certainty is rarely attainable, and there must always be an element of doubt as to every transaction the proof of which rests upon fallible human testimony, nowhere more fallible than in estimates of location and distances upon water.

With some misgivings as to the rectitude of my judgment, but with none as to the rectitude of the considerations which move it, and fully conscious of an imperfection in nautical knowledge which in a case of this nature may lead unconsciously to error, my conclusion is that the Newfoundland, with full knowledge
251 of the blockade at Havana, approached sufficiently near to that port on the night of July 19th to render it easy to elude the blockade, and tarried there sufficiently long to enable her to

discover whether she could do so with safety, and this finding renders it necessary for her to show from all the circumstances preceding, accompanying, or following that act that her presence there was innocent. It is earnestly contended that, being a neutral vessel, not laden with contraband of war, her capture 18 or 20 miles from the port of Havana, while sailing away from it and on the open sea, was a marine trespass. This contention rests upon the ground that there is no sovereignty over the sea, and that it is free to the ships of all nations, a proposition admittedly true in times of peace, but not unqualifiedly true in time of war, for the right of search and the right of blockade conceded to belligerents by the law of nations rests upon the negation of it. The right of blockade can only be effectively exercised by conceding to the belligerent a right of dominion, precarious it may be in tenure, transient in duration, and restricted in area, but none the less a dominion and control over the waters surrounding the place beset. The great object of the blockade is to cut off all communication between those who are within and those who are without the port blockaded, and the law accords to the belligerent nation certain rights or rather privileges undefined by any written code, and in the reason of things indefinable, whereby such object may be effected. All these oppressive incidents, generally vexatious to neutrals, often mischievous, and sometimes unjust, are inherent in the law itself. Among them is
252 that which requires a neutral, found in suspicious proximity to a blockaded port, under circumstances indicating an intention to enter, to give an account of herself. If innocent, she can generally do so.

We will now look into the character and conduct of the Newfoundland to see whether her presence off Havana is consistent with innocent intent.

She is a small steamship, lately employed in the sealing business. She sailed from Halifax July 9th, loaded with a cargo of provisions, under command of Captain Malcolm, who was employed for that voyage. She had two clearances, one for Kingston and one for Vera Cruz. Commander Mackenzie testifies that it is not the practice of any American custom-house to give two clearances. Captain Malcolm says that this is not unusual in Halifax, and that he has generally had separate clearances for separate ports, sometimes five or six, whenever he had cargo for each. We have no statute prescribing any regulation on this subject, and wherever a ship has separate cargo for separate ports I can see no reason why she should not have a clearance for each, and I am informed that it is the custom at this port to give such separate clearances. While I cannot hold that separate clearances for Kingston and Vera Cruz were in themselves suspicious, it is a cause of grave and just suspicion that her real and primary destination was to neither of those ports, as subsequent events proved. Captain Malcolm in his testimony *in preparatorio* said that his verbal instructions were to sail for Caibairien or Sagua la Grande, and if those ports were blockaded to go to Kingston and cable for orders. For reasons, into which it is not the province of this court to inquire, neither Sagua

nor Caibairien were included among the ports blockaded under the proclamation of the President, and he had the right to go to
253 either. Whether in so doing without proper clearances he would have incurred penalties under the municipal regulations of Great Britain or of Spain is not within the scope of this inquiry; certain it is that he would have committed no offence cognizable here.

Taking his course to the southward, he next appears off Nuevitas, where he is boarded by Lieut. Titus, of U. S. S. Badger, and is informed by him that the whole coast of Cuba is blockaded. The case is not presented in an aspect which requires any determination of the question whether that sort of a blockade was effective or legal, as he did not go to either Sagua or Caibairien for the purpose of testing its validity, which he might well have done. According to his testimony *in preparatorio*, and it is repeated on this hearing, he abandoned all thought of entering either of those ports upon hearing that they were blockaded. His course, then, should have been around the eastern end of the Island of Cuba to Kingston, by way of Cape Maysi, for the course around the western end, by Cape Antonio, was nearly a thousand miles further. In these days of sharp competition intelligent men do not make such long detours in the prosecution of legitimate business. The explanation given is that he wanted to satisfy his charterers by showing them that he had passed by the port to which he was directed to go, and, further, that he apprehended that he would subject himself to suspicion by changing his course at that time. The answer to this is obvious. His charterers did not instruct him to go by the ports of Sagua and Caibairien, but to go to them, and if he did not intend to do that his proceeding in that direction was such a futile, time-consuming, and coal-consuming venture that it staggers credulity to accept it as the true reason; nor does the other reason given seem much more
254 satisfactory. There was nothing unlawful in his setting out for Sagua or any other open port in Cuba, and if, after information of the blockade, it became necessary to change his course in order to go by the shortest route to Kingston, his contingent destination, there would have been no risk in disclosing the truth. In this, as in most of the affairs of life, the straightforward course would have been the wisest course. That it was not taken suggests the conclusion that neither Sagua nor Caibairien was the real destination. It appears from the testimony that neither at the time of capture nor afterwards was anything ever heard about Sagua or Caibairien until it came out in the examination of Captain Malcolm before the prize commissioners. None of the other officers of the ship appear to have known about it. The mate seems to have thought that they were going to Vera Cruz. In the engineer's log there appears every day from July 9th to July 18th, inclusive, a line at the top of the page containing the words, "from Halifax to Vera Cruz and —— Cuba." The word Kingston is written over and partially obliterates the word Cuba. There is a blank space before the word "Cuba," evidently intended to be filled in. "Havana" would about fill it. The engineer appeared to be the most intelli-

gent man on the ship after the master. From this entry on his log it is plain that he knew that the ship's destination was Cuba, and there would seem to be no good reason why the name of the port should have been left blank if it was Sagua or any other open port. In the absence of any testimony confirming the master's statement that his instructions were to go to Sagua or Caibairien, and there being nothing in his conduct showing that that was his real destination, I must hold it to have been a pretensive destination,
255 and his appearance before Havana is therefore not satisfactorily explained.

Lieutenant Culver, of the Mayflower, who boarded her, says that when he asked Captain Malcolm where he was bound he was very vague in his replies, sometimes saying Kingston and sometimes saying Vera Cruz, and when asked whether he was shaping his course by way of Cape San Antonio he replied that he hadn't made up his mind. In the same conversation he said that he had been making 8 knots an hour from the time he was boarded by the Tecumseh to time of overhauling. To Commander Mackenzie, on the Mayflower, he said he was making for Vera Cruz, if he had coal enough, and then to Kingston. If he did not have enough coal, he was going to Kingston in order to take on coal. To Lieut. Pratt, the prize master on the voyage up to Charleston, he said that he was bound for Vera Cruz.

Captain Malcolm says, in his testimony, that his instructions were to go to Kingston if he found the ports of Sagua and Caibairien blockaded, and from there he was to cable for instructions, and that Kingston was his destination; that he had plenty of coal to get to Kingston, but not enough to go to Vera Cruz and then Kingston.

It must be conceded that there is no proof of any attempt to enter the port of Havana—that is to say, no witness has testified to seeing her heading that way. It must also be admitted that the testimony as to loitering falls very far short of the proof offered in the Neutralitet, the Apollo, the Charlotte Christine, the Gute Erwartung, the cases relied on by the Government. All of these cases arose before the days of steam power, but the principles upon which they rest, and which I hold to be sound principles, require their application to conditions now prevailing, when the use of
256 steam power renders the eluding of blockades a far more facile undertaking, and I feel compelled to hold that the whole purpose of a blockade would be rendered nugatory if a steam vessel is allowed, after notice, to approach in the night time so near to a blockaded port as to be able to see signals from the shore and to watch for the opportunity of entering, if it should appear that the coast is clear or the vigilance of the belligerent cruisers is for the time relaxed. A ship so approaching lays herself under the unavoidable imputation of being engaged in an attempt to break the blockade, and there is a necessary presumption of sinister motive, which must be rebutted by positive proof, that her presence there is innocent; that she is there either from some necessity or in the course of a voyage which requires her to pass that way. I feel

bound to hold that the weight of the testimony is on the side of the Government in fixing her position at 6 o'clock at a point from 5 to 8 miles from the nearest shore and not as fixed by her officers, at a point about 14 miles from the shore; for why should the mate of the Tecumseh have warned them to keep off farther from the shore, a warning which they admit having received, if they were where they claimed to have been—far beyond the reach of any shells, against which the warning was given? For this and for the reasons already stated I must conclude that she was at that point at 6 o'clock, and that at 8.30 she was at a point not more than 10 miles distant and not more than 10 miles from Havana light, just outside the cruising grounds of the blockading fleet, from which she could readily see whether it was safe for her to attempt to enter. Having denied that she was there, and having failed to sustain that denial by adequate proof, and having failed to give a satisfactory account of
257 her being in that neighborhood at all, I am compelled to condemn both |ship and cargo. I do so with great reluctance. The attempt to carry a cargo of provisions to a starving people, even for purposes of speculation, excites rather sympathy than condemnation, and confiscation is a harsh punishment for such offense.

No country has ever yet been brought to terms of peace merely by restrictions upon its commerce with neutrals, for the great issues of war are decided by the contests of armies upon land and of navies upon the sea. In their ultimate decision the seizure and confiscation of private property, whether of enemy or of neutral, weighs as lightly as a feather floating on the summer breeze; but until some Amphictyonic council of the civilized States now models the law of nations and adopts the gospel of commercial peace in the midst of a hostile war, I am bound, sitting in this seat, to administer the ancient law as I find it, and am not permitted to soften its harsh provisions.

Both ship and cargo are the property of citizens, not merely of a neutral, but of a friendly State, and it should be remembered, it can never be forgotten, of a State which in a supreme crisis has demonstrated its sympathy and friendliness; and there may be considerations of comity and of public policy, considerations into which, sitting in this court, I have no right to enter, which may suggest as an act of grace the mitigation of the extreme demands which under the law of nations are of incontestible right.

258 *Order for Sale.*

Filed Sept. 13, 1898.

UNITED STATES OF AMERICA,
Eastern District of South Carolina.

In the District Court. In Admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP NEWFOUNDLAND.

For the reasons and upon the grounds stated in the opinion of the court in this cause filed September 12, it is adjudged and decreed that the steamship Newfoundland and cargo, as she now lies in this port, be condemned, forfeited, and sold as lawful prize of war, and that writs of *venditioni exponas* issue to the marshal for said steamship and cargo.

Further ordered that said vessel and cargo be sold separately, the cargo to be sold in such manner as may be to the best interests of the Government and the captors; that said sale be made by the marshal, by public outcry, at the eastern door of the United States custom-house, in the city of Charleston, S. C., on October 11th, 1898, notice of said sale being published in the News & Courier and Evening Post, of Charleston, S. C., and the Journal of Commerce, of New York, twice a week for three weeks prior to said sale.

Further ordered that the marshal shall unload and store said cargo, keeping accurate accounts of same, and report his actings hereunder to the court.

WM. H. BRAWLEY, *U. S. Judge.*

Sept. 13, 1898.

259 *Amended Order for Sale.*

Filed Sept. 24, 1898.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina.

In the District Court. In Admiralty.

THE UNITED STATES
vs.
THE NEWFOUNDLAND.

It appearing that under the order of this court of September 13th, 1898, in this cause a sale of the cargo of the steamship Newfoundland was ordered to be made on October 11th, 1898, and it further appearing that the inventory and unloading of said cargo cannot be completed in time for the necessary advertisement of sale to be made on said date, on motion of the United States attorney—

It is ordered that the sale of the cargo of the Newfoundland be made on October 20th, 1898, in lieu and instead of October 11th, as provided in said order of September 13th.

WM. H. BRAWLEY, *U. S. Judge.*

260 *Notice of Appeal.*

Filed Sept. 22, 1898.

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the District Court. In Admiralty.

THE UNITED STATES OF AMERICA, Plaintiff,
against
THE STEAMSHIP NEWFOUNDLAND and HER CARGO, Respondent. } In Prize.

Notice of appeal.

CHARLESTON, S. C., *September* 22, 1898.

SIR: The respondents appeal from the final decree of the court in this cause to the Supreme Court of the United States.

——— ———,
Proctor for James A. Farquhar, Owner of the Steamship Newfoundland, and for David Robertson and Company, Owners of the Cargo of the said Steamship.

Acceptance of Service.

CHARLESTON, S. C., *September* 22, 1898.

To C. J. C. Hutson, Esq., clerk:

I acknowledge service on me of within notice of appeal & copy of same.

ABIAL LATHROP, *U. S. Att'y.*

261 *Petition of Appeal.*

Filed 28 Sept., 1898.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court. In Admiralty.

JAMES A. FARQUHAR, as Owner and Claimant of the Steamship Newfoundland, and David Robertson and Company, as Owners and Claimants of the Cargo of said Steamship, Respondents, Appellants,
against
THE UNITED STATES OF AMERICA, Plaintiff, Appellee. } In Prize.

Petition of appeal of James A. Farquhar, as owner and claimant of the steamship Newfoundland, and David Robertson and Company, as owners and claimants of the cargo of said steamship.

To the Honorable Wm. H. Brawley, judge of the district court:

The appeal of the above-named appellants respectfully showeth that on or about the nineteenth day of July, 1898, the above-named British steamship Newfoundland and her cargo were captured and seized upon the high seas by the United States ship of war called the Mayflower, Captain M. R. S. MacKenzie commanding, and was brought into the port of Charleston, South Carolina, in charge
262 of a prize crew; whereupon, on or about the 23d day of July, 1898, the United States of America, by Abial Lathrop, United States district attorney, exhibited its libel in the district court of the United States for the district of South Carolina against the British steamship Newfoundland and her cargo, alleging that said steamship was captured in attempting to enter the port of Havana; that said property was lawful prize of war, and praying that the same be condemned and sold as such, and that process of seizure be issued to that end; thereupon said vessel and cargo were seized and detained by the United States marshal for said district under the process of said district court; that process issued out of said court, having been served on Frederick N. Malcolm, master of said steamship. Claims were filed on the 5th day of August, 1898, by James A. Farquhar, of Halifax, Nova Scotia, as owner of said steamship, and by said Frederick N. Malcolm, master and bailee of the cargo on board said steamship and as agent for the owners, David Robertson and Company, of Montreal, Canada, and answers were filed separately by and on behalf of said James A. Farquhar, owner and claimant of the ship, and by and on behalf of David Robertson and Company, owners and claimants of the cargo of said steamship, to the said libel on the 8th day of August, 1898.

This cause came on to be heard before the Honorable Wm. H. Brawley, judge of the district court, on the ship's papers and proof *in preparatorio* on the 10th day of August, and the said judge

having advised thereon, a decree and order *was* entered by the
263 district judge in said court on the 15th & 17th days of August, granting leave to plaintiff to amend its original libel, and for respondents to answer thereto, and directing that further proof might be taken, and that respondents have leave to stipulate for the vessel and cargo. Amended libel by plaintiff was filed on the 17th August, 1898. Answers to said amended libel were separately filed by said James A. Farquhar, as owner and claimant of the steamship, and by David Robertson and Company, as owners and claimants of the cargo, on the 19th day of August, 1898.

That thereafter an appraisement of said vessel and of said cargo was made under an order of said court, and the vessel was appraised at eight thousand dollars and the cargo at twenty-nine thousand two hundred and forty-one dollars and sixty-three cents, and return thereof by the appraisers was filed in said court on the twenty-third day of August, 1898.

That thereafter the cause again came on to be heard before the Honorable Wm. H. Brawley, judge of the district court, upon pleadings and proofs, on or about the 30th day of August, A. D. 1898, and the said judge having advised thereon on the 12th day of September, 1898, made a final decree, which was entered in said court, condemning said steamship and cargo as lawful prize of war and ordering that the same be sold.

That thereafter, on the 22nd day of September instant, a notice of appeal was entered with the clerk of the district court and copy served on the district attorney of the United States on behalf
264 of the said respondents, James A. Farquhar, owner and claimant of the said steamship, and said David Robertson and Company, owners of said cargo.

And these appellants are advised and insist that said decree is erroneous, inasmuch as said vessel and cargo were and are not lawful prize of war and were unlawfully captured and seized.

And these appellants, for these and other reasons, appeal from the whole of said decree and from the rulings of the said district judge in favor of the said The United States of America to the Supreme Court of the United States at its next sitting, and on the said appeal they intend to have said cause heard anew in the said Supreme Court on the pleadings and proofs in the district court of South Carolina and other proof to be introduced in the said Supreme Court, and they pray that the said decree in favour of the said United States of America and every part thereof may be reversed with costs, or such other decree thereupon made as to said Supreme Court shall seem just, and that said appellees and the captors of said steamship and her cargo, for whose benefit in part said process was issued, said seizures were made, and said libels were filed, be condemned to pay to these appellants their costs and damages in the premises.

THEODORE G. BARKER,
Proctor for Respondents, Appellants.

Charleston, S. C., September 28, 1898.

Acceptance of Service.

CHARLESTON, S. C., *September* 28, 1898.

I acknowledge due service of within petition of appeal.

ABIAL LATHROP,
U. S. Attorney.

265 *Order Allowing Appeal.*

Filed Sept. 28, 1898.

THE UNITED STATES OF AMERICA, *District of South Carolina.*

In the District Court. In Admiralty.

JAMES A. FARQUHAR, Owner and Claimant of the Steamship Newfoundland, and David Robertson and Company, Owners and Claimants of the Cargo of said Steamship, Respondents, Appellants, *against* THE UNITED STATES OF AMERICA, Plaintiff, Appellee. } In Prize.

Hearing the petition of appeal in above-entitled cause to the Supreme Court of the United States, on motion of Theodore G. Barker, Esquire, proctor for respondents, appellants, it is ordered that said appeal be, and the same is, allowed.

I further certify to the honorable the Supreme Court of the United States of America that the appeal above allowed is from a decree of the district court in a cause of prize, and that the adjudication involves a question of general importance, and that the matter in dispute exceeds in value the sum of five thousand (5,000) dollars, exclusive of costs.

(Signed) WM. H. BRAWLEY, *U. S. Judge.*

Sept. 28, 1898.

Acceptance of Service.

CHARLESTON, S. C., *September* 28, 1898.

I acknowledge due service of the within order allowing appeal & certificate of the district judge.

ABIAL LATHROP, *U. S. Att'y.*

266 *Appeal Bond. Filed Oct.* 19, 1898.

THE UNITED STATES OF AMERICA:

Know all men by these presents that we, James A. Farquhar, of Halifax, Nova Scotia, and David Robertson, for himself and for the firm of David Robertson and Company, of Montreal, Dominion of Canada, and Theodore G. Barker, of Charleston, S. C., and D. B. Gilliland, of Charleston, S. C., are held and firmly bound unto the

United States of America in the full and just sum of five hundred dollars, current money of the United States, to be paid to the said United States of America or its assigns; to which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of October, in the year of our Lord 1898.

Whereas lately, at a district court of the United States for the district of South Carolina, in the fourth circuit, in a certain cause of prize between The United States of America, libellant and appellee, and The Steamship Newfoundland, of which James A. Farquhar is owner and claimant, and her cargo, of which David Robertson and Company are owners and claimants, respondents, appellants, brought into said court upon a libel for condemnation filed by Abial Lathrop, district attorney for said United States of America, a final decree was rendered against said steamship and her cargo, and the said respondents and appellants having obtained leave to remove said cause to the Supreme Court of the United States, and have prayed the reversal of said decree in the aforesaid suit:

Now, the condition of the above obligation is such that if the said obligors shall duly prosecute their said appeal to effect and
267 answer all damages and costs if they shall fail to make their plea good, then this obligation shall be null and void; otherwise to remain in full force and effect.

JAMES A. FARQUHAR. [SEAL.]
DAVID ROBERTSON. [SEAL.]
THEODORE G. BARKER. [SEAL.]
DANIEL B. GILLILAND. [SEAL.]

In presence of—

H. A. MACDONALD,
Witness to signature of James A. Farquhar.

G. T. JENKIN,
Witness to signature of David Robertson.

W. HUGER FITZSIMONS,
Witness to signatures of Theodore G. Barker and Daniel B. Gilliland.

Approved:
WM. H. BRAWLEY, *U. S. Judge.*

268 DOMINION OF CANADA, }
Province of Nova Scotia, County of Halifax, } *ss:*

To all to whom these presents shall come, Greeting:

I, W. Ernest Thompson, of Halifax, in the county of Halifax, in the province of Nova Scotia, a notary public, duly admitted and sworn, residing and practising at Halifax aforesaid, do hereby certify that H. A. Macdonald, subscribing witness to the foregoing bond or indenture, appeared before me and made oath that James A. Farquhar, mentioned in the aforesaid bond or indenture, did sign,

seal, and — his act and deed deliver the above-written or foregoing bond in his presence.

In testimony whereof I have hereunto subscribed my name and affixed my seal to these presents, at said city of Halifax, this 30th day of September, A. D. 1898.

W. ERNEST THOMPSON,
[SEAL.] *Notary Public.*

269 PROVINCE OF QUEBEC, }
District of Montreal. }

To all to whom these presents shall come, Greeting:

I, John Fair, of the city of Montreal, in the province of Quebec, a notary public, duly admitted and sworn, residing and practising at Montreal aforesaid, do hereby certify that G. T. Jenkin, subscribing witness to the foregoing bond or indenture, appeared before me and made oath that David Robertson, mentioned in the aforesaid bond or indenture, did sign, seal, and as his act and deed deliver the above-written or foregoing bond in his presence.

In testimony whereof I have hereunto subscribed my name and affixed my seal to these presents, at said city of Montreal, this fourth day of October, eighteen hundred and ninety-eight.

JOHN FAIR,
[SEAL.] *Notary Public.*

270 *Citation. Filed Sept.* 28, 1898.

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

JAMES A. FARQUHAR, Owner and Claimant of Steamship Newfoundland, and David Robertson and Company, Respondents, Appellants,
against
THE UNITED STATES OF AMERICA, Plaintiff, Appellee. } Citation.

The United States of America to Abial Lathrop, district attorney of the United States for the district of South Carolina:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 31st day of October next, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of South Carolina, in the fourth circuit, wherein James A. Farquhar, owner and claimant of the steamship Newfoundland, and David Robertson and Company, owners of the cargo of said steamship, are appellants and The United States of America, by you, is appellee, to show cause, if any, why the decree rendered against said appellants as in said appeal mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 28 day of September, in the year of our Lord 1898.

(Signed) WM. H. BRAWLEY, *U. S. Judge.*

Acceptance of Service.

CHARLESTON, S. C., *Sept.* 28, 1898.

I acknowledge due service of within citation on appeal.

ABIAL LATHROP.

271 *Assignments of Error. Filed Sep.* 28, 1898.

THE UNITED STATES OF AMERICA:

In the Supreme Court. In Admiralty.

JAMES A. FARQUHAR, Owner and Claimant of Steamship Newfoundland, and David Robertson and Company, Owner- and Claimants of the Cargo of said Steamship, Respondents, Appellants,

against

THE UNITED STATES OF AMERICA, Plaintiff, Appellee.

Appeal from the district court for the district of South Carolina in a prize cause.

Assignment of Errors on Appeal.

1. The court below, the district court of the United States for the district of South Carolina, erred in not releasing the Newfoundland and her cargo on the first hearing, upon the ship's papers and proofs *in preparatorio*, the district judge having, after full argument and consideration, found that there was no evidence before the court upon which the ship and cargo could be condemned, and that—

"Taking the testimony which alone is now before the court, there is nothing in it which shows or tends to show that the Newfoundland, at the time of capture or at any other time, was heading for the port of Havana or any other port."

2. The district judge erred in holding, upon the hearing *in preparatorio*, that Commander Mackenzie's opinion, that the movements and conduct of the Newfoundland on the night of the capture were suspicious, furnished "ground for ordering
272 further evidence," Commander Mackenzie's opinion not being in evidence at that hearing and being in itself no legal ground for such order.

3. The district judge erred in his decree granting leave to plaintiff to amend its libel, upon which the issue had been made and joined and the hearing had been had, and to make a new case upon new pleadings and new proof, there being no evidence before the court of any attempt to break the blockade.

4. The district judge erred in his decree of August 15, in allowing plaintiff to make further proof, the facts of the case, as found by the district court (opinion and decree filed August 17), affording

no legal foundation for doubt and affording no proof of any overt act to justify the condemnation of the ship.

5. The district judge erred in overruling the exceptions of respondents to the decrees of August 15th and 17th and in trying the case on further proofs.

6. Upon the second hearing the district judge erred in admitting, as evidence of facts, the testimony of the officers of the Mayflower and Tecumseh, consisting of attempts to locate the positions of the steamship Newfoundland on the ocean in reference to Havana light, her position when she met the Tecumseh, and the positions of the Newfoundland and of the Mayflower at various times; also undertaking to locate on the chart those positions so attributed to the Newfoundland, to the Tecumseh, and to the Mayflower, and to give the latitude and longitude, the witnesses having all declared that those positions were located without taking observations at the times and were merely approximate estimates, and such estimates being based on wholly incomplete and insufficient data of calculation and not being legal proof.

273 7. The district judge erred in disregarding the uncontradicted and unimpeached testimony of the master of the Newfoundland, which located the course of the ship during the voyage through the old Bahama channel and to the point of capture and the successive positions of the ship on her westward course, her positions having been taken at the times stated by actual observation and located on the ship's chart by the ship's log and other sufficient data.

8. The district court erred in accepting as proof the estimates and opinions of the officers of the Tecumseh as to the time of her meeting and the time of her leaving the Newfoundland on the afternoon of 19th July, and basing his decree upon such estimates and opinions, without evidence of fact upon which such estimates and opinions were based, and against the otherwise uncontradicted evidence in the cause, and in disregarding the evidence which impeached the accuracy of such estimates and opinions.

9. The district court erred in finding as a conclusion of fact that the Newfoundland had "loitered" in passing the port of Havana, such conclusion being based upon a theory of inference from assumed times, places, and rate of speed of the Newfoundland, none of which were or could be proved to be correct, and most of which differed from that shown by the unimpeached testimony in defence, and which assumptions, theory, and inferences were shown to be incorrect.

10. The district court erred in accepting the theory and inference of "loitering" as evidence in the cause and as proof of an overt act committed by the Newfoundland in violation of the blockade established by the United States Government of certain ports on the island of Cuba.

274 11. The district judge erred in holding that the ocean, at a point ten miles off from the shore at Havana, and at the point of capture, a point 18 to 21 miles off from Havana, both points being outside of the cruising ground of the blockading fleet, was

prohibited water, and that the Newfoundland had been seen or taken within blockade waters.

12. The district judge erred in holding that the marine trespass committed by the commanding officer of the Mayflower upon the property of neutrals by seizing the ship Newfoundland and her cargo was justified by the alleged suspicious circumstances in the case, there being no overt act proved and no fact established in proof to which suspicion of intention could legally be attached to make out a case for condemnation of ship and cargo as lawful prize of war.

13. The district judge erred in holding as a conclusion of fact that the Newfoundland was captured when she was so near Havana entrance as to compel the conclusion that her purpose beyond a doubt was to enter that port.

14. The district judge, after admitting that there was "no proof that the Newfoundland was seen to be heading for the port of Havana," and that the testimony as to her suggested loitering "falls very far short of the proof offered" in cases cited by the plaintiff, erred in holding that a steam vessel which in the night-time passes a port "near enough to see signals from shore" (although none be proved to have been seen or made) "thereby lays herself under the unavoidable imputation of being engaged in an attempt to break the blockade," and that "there is therein a necessary presumption of sinister motive," although the proof be that when captured she had passed the port, and was eighteen to twenty-one miles
275 away from it, sailing on a westward course, and although the proof be that her fullest steaming capacity was not more than eight knots per hour.

15. The district judge erred in holding "that the Newfoundland, with full knowledge of the blockade at Havana, approached sufficiently near to that port on the night of July 19th to render it easy to elude the blockade, and tarried there sufficiently long to enable her to discover whether she could do so with safety," the proof of plaintiff being that the port of Havana was most thoroughly guarded by a strong blockading fleet; that the master of the Newfoundland had been told by the mate of the Tecumseh about six o'clock p. m. of the same day that there were 30 war ships blockading that port; that the Newfoundland had never been nearer than ten miles from the Havana entrance, had never been nearer than two miles away from the outside lines of the blockading fleet, and when captured had passed Havana and was between eighteen and twenty-one miles to the northwest of that port, sailing on a westward course away from the island of Cuba, and in the waters of the Gulf of Mexico, and there being no proof of her tarrying near to the port of Havana to sustain a legal conclusion of fact.

THEODORE G. BARKER,
Proctor for Respondents, Appellants.

Charleston, S. C., September 28, 1898.

Acceptance of Service.

CHARLESTON, S. C., *September* 28, 1898.

I acknowledge due service of within assignments of error.

ABIAL LATHROP.

276 *Order to Transmit Record.*

And thereupon it is ordered by the court here that a transcript of the records and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Supreme Court, to be held at Washington, D. C., on the 31st day of October, 1898; and the same is transmitted accordingly.

[Seal United States District Court, Eastern District So. Ca.]

CHARLES J. C. HUTSON,
Clerk D. C. U. S., S. C.

Certification.

UNITED STATES OF AMERICA, }
District of South Carolina. }

I, Charles J. C. Hutson, clerk of the district court of the United States for the district of South Carolina, do certify that the foregoing is a full and true record of the proceedings and judgment of the said court in the therein-entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of said court on this twenty-sixth day of October, A. D. 1898.

[Seal United States District Court, Eastern District So. Ca.]

CHARLES J. C. HUTSON,
Clerk D. C. U. S., S. C.

Endorsed on cover: Case No. 17,181. S. Carolina D. C. U. S. Term No., 596. James A. Farquhar, owner & claimant of the steamship "Newfoundland," & David Robertson & Company, owners of the cargo of said steamship, appellants, *vs.* The United States. Filed November 3, 1898.